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THE OPEN DOOR AND
THE MANDATES SYSTEM

THE OPEN DOOR
and
THE MANDATES SYSTEM

A Study of Economic Equality before and since the establishment of the Mandates System

BY

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With a Foreword by

WILLIAM E. RAPPARD

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AUTHOR'S PREFACE

THIS book is an attempt to trace the evolution of the principle of economic equality—commonly called the Open Door—with special reference to its applications to dependencies. It is an historical and descriptive account, based on a broad comparison between the old method and the new, now made possible by the administrative machinery established in the last decade at Geneva.

The Open Door, in American minds at least, recalls, first of all, the Hay doctrine as applied to China. This treatise, however, examines the subject only as it relates to dependencies, colonies or protectorates on the one hand, and mandated territories on the other. It has not seemed advisable to consider in this treatise its special application to China.

Colonial history has been referred to only to the extent necessary to furnish an idea from whence the newer doctrine has sprung. The Mandates System, which has introduced a new method in Open Door administration, is examined rather less as a legal instrument than as a practical device for giving effect to an economic principle in particular situations.

The juridical aspects of this system have received in recent years more attention from scholars than any other. While this phase of the problem is fundamental to any study of the system, it appears that the experience of the Mandates Commission has now covered a sufficient period to enable researches to be made on particular developments in its work, of which Open Door policy and procedure is one of the most important. In this respect new methods of control are being evolved which give to old economic problems a somewhat new character. The precedents established in mandatory administration and supervision of backward territories are creating a new body of "international mandatory law" which can only be more fully examined in the future. This treatise attempts merely to note the beginnings of this development.

The author wishes to thank Mlle Ginsberg, economic documents librarian of the League of Nations Library, and Mr. Friis, member of the Mandates Section of the League Secretariat, for their unfailing kindness in answering questions and securing documentation. He is also indebted to various members of the Seminars at the University Institute for Higher International Studies, at Geneva, for helpful suggestions and criticisms on several chapters read to the Seminar; also to Professor Ernest M. Patterson, for special assistance in securing data; and to Professor Paul Mantoux, for some advice on the chapter dealing with the Peace Conference. Especial gratitude is due to Professor William E. Rappard, whose early encouragement to undertake the study was constantly supplemented by his advice and criticisms, which were particularly valuable in view of his unique experience, both as an economist and as a member of the Permanent Mandates Commission. The author alone is responsible for conclusions reached and for whatever errors may inadvertently have been overlooked.

GENEVA

October 1929

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FOREWORD

The international policy of to-day is a constant paradox. On the one hand, as Mr. Charles Evans Hughes has stated in his recent presidential address before the American Society of International Law, "The building of the institutions of peace is the most distinctive enterprise of our time." On the other hand, there has perhaps never been, certainly not since 1850, a period in which economic war has raged so fiercely between States, and in which the great majority of Governments have deliberately impeded international trade by such an array of formidable tariff barriers.

It is not as if the inherent contradiction between commercial war and political peace were ignored or denied. But, although international co-operation and amicable relations between different peoples have never been more generally extolled nor more highly valued than to-day, contemporary statesmanship seems unwilling or unable to pay the price of real peace in terms of freer economic intercourse. This is all the more surprising as, with the progress of population and technique, international trade is becoming an ever more important condition of general welfare. Furthermore, the fallacies of the traditional protectionist doctrine have never been as universally recognized as such, not only in the universities the world over, but even among politicians.

The founders of the League of Nations, although none too bold in this as in all other respects, were not unaware of the folly of seeking to establish international political peace on the basis of international economic war. That is why they inserted the famous "equitable treatment" clause into Article 23 of the Covenant. Nor were they unaware of the peculiar menace to peace arising out of discriminatory trade policies in backward countries and out of the necessarily ensuing rivalries. That is why they devised the Mandates System and provided, under Article 22, that, in most mandated territories at least, conditions should prevail such as "will . . . secure equal opportunities for the trade and commerce" of all the States members of the League.

* * *

In 1842, in the heat of his Anti-Corn Law campaign, Richard Cobden wrote to one of his friends: "The efforts of the Peace

Societies, however laudable, can never be successful so long as nations maintain their present system of isolation. The colonial system, with all its dazzling appeals to the passions of the people, can never be got rid of except by the indirect processes of Free Trade, which will gradually and imperceptibly loose the bonds which unite our colonies to us by a mistaken notion of self-interest. Yet the colonial policy of Europe has been the chief source of wars for the last hundred and fifty years."

The Mandates System, as a substitute for the traditional colonial system, and the principle of the Open Door, as an essential element of the Mandates System, are strangely foreshadowed in this statement of the great trade emancipator and peacemaker, to whose memory this book might fittingly have been dedicated.

* * *

There is, to my knowledge, no subject in the realm of the social sciences which, in the brief space of ten years, has given rise to a greater number of publications than the institution of mandates. This is doubtless due, not only to its novelty and to its political and economic significance, but also to the relative ease with which it may be studied. The reports of the Mandatory Powers, the minutes of the Permanent Mandates Commission, and the deliberations of the Council of the League are all readily available. As, furthermore, this documentary material grows from year to year, the subject may be said to be in a state of continuous rejuvenation. Whence the great satisfaction of academic students and others in search of an "original" topic for their investigations.

As a consequence of these circumstances, the mass of articles and monographs relating to the Mandates System has become so overwhelming that not even the specialist can claim to have mastered it all. Most of these studies, however, deal either with the institution as a whole, with its origins, its evolution, and its practical working, or with some of the intricate legal problems to which it has given rise, or with the administration of a specified mandated area. For obvious reasons the Mandates System has hitherto been much less considered in its economic aspects. The main obstacle which has blocked the road of this analysis is far easier to discover than to overcome. It resides in the extreme difficulty of estimating the real

significance, the actual effectiveness of the Open Door principle as laid down in the mandates.

What would be altered, what would be different in the day to day economic life of the mandated territories were their administration neither subjected to an international control nor bound to respect and enforce the principle of equal opportunity for the trade and commerce of all the members of the League?

This is the cardinal question. And to that question it is well-nigh impossible to reply with assurance and accuracy.

* * *

Dr. Benjamin Gerig deserves great credit for the courage with which he has affronted this difficulty, and sincere congratulations on the at least partial success with which he has overcome it. His careful studies have satisfied him that the international control of the enforcement of the Open Door principle under the Mandate System is a reality. On this point no impartial witness will, I believe, challenge his conclusions. And although the members of the Permanent Mandates Commission cannot lay claim to impartiality in the appreciation of what is largely their own work, they will certainly not dissent.

To the second point involved in the above question, Dr. Gerig has not been able to furnish a clear and categorical reply. And here again his reticence will surprise neither the members of the Mandates Commission nor the impartial witness to the working of the system. The principle of economic equality may be strictly observed, both in the enactment of ordinances relating to customs, concessions, loans, immigration, and all such matters, and in the administrative enforcement of such ordinances, without appreciably diminishing the preponderance of the Mandatory Power and its nationals in the economic life of the territory under its control.

It is all the more difficult to assess the practical importance of the principle in these areas as, having been already spontaneously applied by Germany to its former colonies before the war, its introduction in the guise of an international obligation worked no revolution. And as their present masters have everywhere become economically preponderant in these territories, so were their former masters.

In view of these facts, the sceptic might well be tempted to

question the effective validity of a principle which, even when honestly enforced, seems to produce tangible results neither in the interests of those in whose favour it is established nor at the expense of those who of their own free will or under international compulsion extend its theoretical benefits to others.

Such an opinion, however plausible at first glance, would nevertheless, in my judgment, be entirely erroneous for two reasons.

In the first place, the facts themselves, although they do not clearly point to a positive conclusion, do certainly not thereby warrant a negative one. Even if it be impossible to prove in a given instance that the principle of the Open Door has effectively widened the sphere of international competition, as it should normally be expected to do, it is still less possible to assert with assurance that it has not done so. The fact that I cannot remember whether the sun shone to-day a year ago does not prove that it rained. Indeed, if I were writing on the Riviera in May, the presumption would be in favour of sunshine, even if my memory failed me.

Secondly, to question the effective validity of the principle of economic equality because its practical results are not susceptible of positive proof, is to overlook an extremely important political aspect of the matter. What has most often created jealousy, irritation, and international friction in colonial affairs in the past has been not so much the absence as the impossibility of trade with one's neighbours' possessions. An open door through which no one passes is not equivalent to a locked door, as a hermit, who never leaves his cell, is not in the same moral position as an interned criminal who is confined to his. To resort to another comparison, the policy of prohibition in America is irksome, not only to those with whose habits of conviviality it interferes, but also, and hardly less so, to many abstemious liberals who resent, not the lack of liquor, but what they hold to be an unjustified limitation of their personal freedom. So that even if it could be shown, which it certainly cannot, that the policy of the Open Door does not always promote foreign trade, even if it were not more than likely that it did, which it undoubtedly is, the pacifying international virtues of that policy would remain sufficient to justify its present existence, its gradual extension, and its ultimate generalization.

In his interesting book, Dr. Gerig has shown, not only the present

status of that policy as applied to mandated territories, but also its origin and its historical evolution. By so doing he has thrown much light on a subject that is far more often alluded to than really understood. No one will read his monograph with more interest and more gratitude than the members of the Permanent Mandates Commission. They will surely all appreciate, not only his kindly appreciation of their efforts, but also his scholarly and discriminating treatment of a difficult, interesting, and important subject. And one of them at least is happy to declare that he truly profited by it.

The Mandates Commission sees its most useful allies in those who, through publications based on disinterested research and intelligently critical study, enlighten world opinion on the great experiment in colonial administration that was initiated ten years ago. That experiment, the success of which will, of course, depend primarily on the Mandatory Powers, is placed under the immediate international guardianship of the Commission. But the Commission can do but little if deprived of the active support of an enlightened public opinion under whose moral guardianship in turn its own labours are placed.

Dr. Gerig has deserved the congratulations and the thanks, not only of the Permanent Mandates Commission, but also of that much wider circle, the *custodes custodum*, on whose anonymous shoulders rests the ultimate responsibility for this as for so many other international tasks in the world to-day.

WILLIAM E. RAPPARD

VALAVRAN, GENEVA

November, 1929

THE OPEN DOOR AND THE MANDATES SYSTEM

CHAPTER I

COLONIAL TARIFF POLICIES PRIOR TO THE BERLIN ACT OF 1885

I

THE principle of equal economic opportunity—commonly known as the Open Door—is a commercial policy toward dependencies which has been given extraordinary significance by the constitution of the Mandates System and the establishment of the Permanent Mandates Commission. In the decade before 1920 the Open Door, as a colonial trade policy, was not only losing ground to alternative policies of assimilation[1] and preferential tariffs,[2] but owing to inadequate international machinery for applying the Open Door—when made the subject of multilateral treaty as in the Berlin Act of 1885, or of bilateral agreements with most-favoured-nation extensions—it was losing prestige and confidence as an international commercial policy.

A study of the Open Door principle before and since the Mandates System suggests a comparison. Not only must the principle under its differing applications be compared with itself, but it must be observed in relation to other colonial

[1] By assimilation is meant a condition of free trade between the colonies and the mother country with the metropolitan tariff system extended to cover the colony.

[2] Preferential tariffs are of many kinds, but whether applied to imports or exports, reciprocal or non-reciprocal, they all include some degree of tariff discrimination against the nationals of other countries. See in the *Annals of the American Academy of Political and Social Science*, March 1924, pp. 212 ff., a discussion of preferential tariffs by B. B. Wallace.

economic policies. The constantly changing character of colonial economic policies, such as the Open Door, makes simple comparison of trade statistics and their analysis, even when reliable and comparable, wholly inadequate for our purpose. The Open Door, it will be seen, has evolved from a simple tariff and trade problem to a highly complicated and involved problem of investments, concessions, and consortiums to which the application of the principle of equal economic opportunity becomes, in the modern world, a more serious and difficult matter.[1]

The Open Door may be adopted as a matter of national policy. This in modern times has been the general position of Great Britain, the Netherlands, and Germany. Or, again, it may be adopted as a treaty stipulation, as was done in 1885 for Central Africa, in 1906 for Morocco, and in 1898 and 1922 for China. Whatever the method employed, there can be little doubt that the Open Door, by introducing the element of equal and fair treatment, serves to allay some of the sharpest friction inevitable in an economically interdependent world. "One of the greatest possible steps toward world peace", says a well-known writer, "would be a treaty signed by the ten leading colonial Powers guaranteeing the Open Door, not only in their own colonies, but in the independent countries of the world, such as China, Turkey, Mexico, Siam, Liberia, Abyssinia, Persia, and Afghanistan, and placing the supervision of such an agreement in the hands of some impartial international tribunal."[2]

This study, however, is confined to an examination of the Open Door as a colonial economic policy. In order to see the evolution of this principle it will be necessary to consider

[1] The term "Open Door" will be used interchangeably with "equal economic opportunity". The Open Door means the absence of discriminations. As a colonial tariff policy it means that foreigners receive national treatment which may involve import duties if uniformly applied to all. Cf. W. S. Culbertson, *International Economic Policies*, ch. viii.

[2] R. L. Buell, *International Relations*, p. 441.

briefly the nature of early colonial trade practices as a background to the modern period.

Passing rapidly over the period following the era of extensive territorial discoveries in the fifteenth century a study of early colonial trade policies reveals the general practice of absolute prohibition often enforced by the severest penalties. Monopolies were often granted to chartered companies, who held exclusive control of the carrying trade and of the sources of raw materials within the area claimed by right of discovery and conquest. In keeping with the prevailing mercantilist conception, stress was laid on the acquisition of the precious metals. While the Spanish were pushing their expeditions in the Western Hemisphere and the Portuguese were rounding the Cape of Good Hope to India, the Pope declared the unconquered portions of the world divided between the two. But these pretensions were too extensive to be effective. Although the King of Portugal was able for a time to establish the principle that no ship might sail in the Indian Ocean without his permission,[1] the Dutch boldly challenged this monopoly of the high seas, and by 1630 possessed one-half of the world's merchant marine.[2] France and Great Britain, though somewhat tardy in colonial pioneering, looked beyond the possible treasure to be extracted from the New World, and began to establish settlements and commercial activities. Moreover, Great Britain enforced a virtual monopoly of the carrying trade by her Navigation Acts, which caused the Dutch, by the end of the seventeenth century, to lose their primacy on the seas.

The eighteenth century left France and Great Britain as the leading colonial rivals. But between 1756 and 1815 France lost Canada, India, and various small colonies to Great Britain; while the latter took from Holland a vast portion of her colonial empire. In the same period, however, Great Britain lost her thirteen American colonies. This loss was soon equalled by the

[1] Charles Seignobos, *History of Mediaeval and Modern Civilization*, p. 244.
[2] U.S. Tariff Commission, *Colonial Tariff Policies*, 1922, p. 1.

French, Spanish, and Portuguese in the sale of Louisiana territory, and the independence movement of the Latin-American States, leaving Great Britain by the beginning of the nineteenth century as the foremost colonial Power.

This period of colonial enterprise was characterized by the principle of exclusion and of monopoly applied to every aspect of colonial trade. This monopoly was made effective not by differential tariffs, as is the practice to-day, but often by absolute prohibitions enforced by the severest penalties. This policy was only gradually relaxed toward the end of the period by the conclusion of commercial treaties.

II

The second period of colonial history in respect of commercial policy embraces the six decades between the Napoleonic Wars and about 1880. During this period a more liberal policy was pursued by the Powers towards their colonies, and the former restrictions on colonial trade were greatly relaxed. Trade prohibitions[1] gave way to differential tariffs, and, in the case of the British Empire, preferential tariffs gave way between 1846 and 1860 to a general free trade policy, which continued almost unchallenged until about 1880. During this period also there was a general decline of interest in colonial expansion, if we except France, which proved to be the quiescent period before the greatest of all races for colonial empire—the struggle for possession of Africa after 1880.

The reasons for this indifference to colonial expansion and the correspondingly liberal trade policy are not far to seek. First may be cited the independence movement of the American colonies and the resulting conclusion that it hardly paid to make heavy expenditures in territories settled by Europeans, who

[1] Prohibitions were applied in some cases to whole colonies, and in other cases to lists of particular commodities.

inevitably would declare themselves independent.[1] The liberal and humanitarian concepts developed by the French Revolution added strength to this idea. Furthermore, Adam Smith's exposure of the fallacy of mercantilism[2] began to be widely accepted at about this time. A complete readjustment as to the place of colonial possessions in the national economy was taking place. Added to this was the decrease in the relative importance of colonial trade. While the colonies continued to be valuable sources of raw materials, the manufactured products, so greatly increased by the event of the industrial revolution, found more ready sale in other more populous and highly developed territories than in the backward and sparsely settled colonies.

The free trade and anti-colonial movement, so vigorously expounded in England by Richard Cobden from 1835 until his death in 1865, spread its influence far beyond Great Britain. Bismarck, although not a free-trader, was not easily convinced of the value of colonies and only reluctantly acceded to the growing demands of his fellow-countrymen, some of whom were among the leading explorers and scientists, who were making "the dark continent" of Africa known to the world. After the publication in 1879 of Frederick Fabri's book, *Bedarf Deutschland der Kolonien?* public opinion in Germany began rapidly to favour the acquisition of colonies.[3] In December 1882 the Deutsches Kolonialverein was founded, and on April 24, 1884, Bismarck officially announced that a section of the coast of South-West Africa was under German protection. On this late date Germany first assumed the responsibility of a colony-holding Power. Her colonial policy, which was always based on the Open Door, is considered in a subsequent chapter.[4]

France, which to-day holds a position among colonial Powers

[1] Cf. W. H. Dawson, *Richard Cobden and Foreign Policy*, pp. 183 ff.
[2] Cf. Adam Smith, *Wealth of Nations*, Book IV, ch. vii, part iii.
[3] *Colonial Tariff Policies*, p. 227.
[4] *Infra*, ch. iii.

second only to Great Britain, had already gained and lost an empire before 1815. In the period under discussion, being less indifferent than England to colonial expansion, she was rapidly regaining another by the acquisition of Algeria (1857) and certain islands of Oceania under Louis Philippe (1830–48), while Napoleon III added Cochin China (1861), Cambodia (1867), and New Caledonia (1868), extending at the same time French influence in Western Equatorial Africa and making some treaties with the natives of Madagascar. The ill-fated expedition of Maximilian to Mexico (1862–66) under Napoleon III further indicates the French colonial interest of the period, an interest, however, which was more official than popular.

The French colonial tariff policy before 1880 had undergone several radical changes. Her first colonial empire was subjected to a monopolistic regime which was swept away by the French Revolution in favour of an assimilation policy in which it was decreed that there should be no tariffs between France and her colonies, the latter being considered as parts of France herself. At the same time a reduction was made on the duties of goods from foreign countries. But Napoleon I reverted again toward a system of exclusion which was not definitely abandoned until the time of Napoleon III. From 1860 to 1866 Napoleon III negotiated a series of commercial treaties with foreign countries which greatly liberalized the whole tariff policy of France. This turn was initiated by Richard Cobden in the famous Cobden Treaty of 1860 between England and France, which Napoleon negotiated secretly and which was not even confirmed by the French legislature.[1] The liberal policy was extended to the colonies. Between 1861–70 the chief features of French colonial tariffs were:

(1) Foreign goods could enter the colonies. Exclusion was already modified in 1845.

[1] Cf. Charles Angier and Angel Marvaud, *La Politique douanière de la France dans ses rapports avec celle des autres États*, 1911, pp. 3, 5.

(2) Colonial products could now be sold in foreign markets.
(3) Ships of any nationality could enter the French colonial trade, subject to the payment of navigation surtaxes—the latter being later discontinued.
(4) Duties on colonial imports into France were abolished or reduced.
(5) Tariff autonomy was granted in 1886 to Martinique, Guadeloupe, and Reunion, the Council of State ratifying measures of tariff reduction.
(6) Goree, in Senegal, was made a free port; while Guiana had a duty of 3 per cent. and no discrimination.

In other respects, too, the system was liberal.[1]

But a commercial depression beginning in 1873 made the liberal movement lose ground, and by the end of the decade most Continental countries, France among them, were rapidly returning to protection. And for France this was the beginning of an expanded policy of colonial assimilation.[2]

The early history of Dutch colonization is the history of the Dutch East India and the Dutch West India Companies. In 1617 the East India Company established its centre at Batavia, on the Island of Java, which has since remained the heart of the Netherlands Colonial Empire. At the end of the eighteenth century the administration of the East India Company's holdings was taken over by Great Britain, but the East Indies were restored by the settlement at Vienna in 1815.

The Dutch West India Company, chartered in 1621, followed a policy of trade monopoly rather than of colonization, and thus gradually lost all but Dutch Guiana and Curaçao in the Western Hemisphere. Their claims to Brazil were surrendered to the Portuguese in 1662; while the British took

[1] Cf. Arthur Girault, *The Colonial Policy of France*, 1916, pp. 60, 71–80. Also August Arnauné, *Le Commerce extérieur et les Tarifs de Douane*, 1911, pp. 148, 269–74.

[2] Girault, *op. cit.*, pp. 6, 84–9.

the colony of New Netherlands in 1664. Ceylon and Cape Colony were lost to the British during the Napoleonic era. In location and extent the Dutch colonial possessions have substantially remained what they were in 1815. With all these losses, Holland remains to-day, from the point of view of colonial population, the third among the colonial Powers of the world.[1]

Holland is to-day, and always has been, a free trade country. The moderate protective tariff adopted at the close of the Napoleonic War was reduced after the separation of Belgium from Holland in 1830. Her colonial trade policy in the early period and down to 1800 was, however, one of monopoly and exclusive privileges. Even after the Government took over the administration from the Companies this monopoly was continued, not only against foreign nations, but often against her own subjects through the so-called "culture system", whereby the natives in the East Indies were required to plant one-fifth of the village lands in some exportable crop, such as tea, coffee, or sugar-cane. One day in seven was to be devoted to the cultivation of the crop, and one-third of the crop so produced was taken over by the Government at a nominal cost, while the remainder might be sold to the Netherlands Trading Company, which had a monopoly on the sale and transportation of Government produce. The system produced large revenues for the mother country, but liberal sentiment condemned it as "cruel and unjust exploitation", and by 1865 it was given up.[2] It is said that Java is almost the only colony which in modern times has produced a large and regular revenue to the home Government, estimated over the forty years after 1830 at over 360,000,000 dollars.[3]

In general, Dutch colonial tariff policy from 1815 to 1880

[1] The colonial area of 781,500 square miles is sixty-two times that of the mother country. The colonial population of approximately 50,000,000 (*Statesman's Year Book*, 1927) is nearly eight times that of Holland.

[2] Clive Day, *The Dutch in Java*, p. 335.

[3] *Ibid.*, p. 309.

was that of preference.[1] And as monopoly gave way to preference, so the latter in the next period after 1886 gave way to the Open Door. By the colonial constitution of 1815, Dutch ships and cargoes paid less than foreign. In 1818 a tariff law provided that foreign products should pay 12 per cent. duty and the Dutch 6 per cent. A Royal Decree in 1819 placed Dutch products, carried to the colonies in Dutch ships, on the free list. By a commercial treaty with England in 1824, it was agreed that neither Power should pay, in the possessions of either, more than double the duty which the other paid. By a series of most-favoured-nation treaties between Holland and other countries, beginning with one concluded with the United States in 1839, reciprocal treatment is extended to the Dutch colonies, with the exception, always made, of products coming from the native States of the Oriental archipelago. In 1850 the shipping monopoly was relaxed, and in 1858 sixteen ports were opened to general commerce. But differential duties on foreign shipping still continued.[2] However, American and English firms were able, in spite of discrimination, to compete in these markets with the Dutch, and, following a commercial treaty with France in 1865, Holland began to modify the preferential system in the direction of a low revenue tariff. After a term of years in which such changes were continued, a system was finally adopted in 1886 in which a general *ad valorem* rate of 12 per cent. was adopted applying equally to the commerce of all nations. A system of non-discriminatory export duties still continues and is used for revenue purposes only. Thus the Open Door policy was adopted which continues to the present.

[1] Curaçao, in the West Indies, was long an exception. The tariff history of this island is traditional for free trade. "Curaçao and Eustatia", wrote Adam Smith (*Wealth of Nations*, Book IV, ch. viii, part ii), "the two principal islands belonging to the Dutch, are free ports, open to the ships of all nations, and this freedom, in the midst of better colonies whose ports are open to those of one nation only, has been the great cause of the prosperity of these two barren islands."

[2] Paul Leroy-Beaulieu, *De la Colonisation chez les peuples modernes*, 5th ed., vol. i, p. 286.

The existing system of colonial tariffs in the Dutch East Indies has received much praise. One English writer declares that it "leaves on the whole little to be desired. It is long established, has been continuous, and yields good results."[1] No concealed preferences seem to be practised.[2]

The Portuguese were the original colonizers among modern nations. By 1540 the Portuguese were established along the coasts of Africa, in Persia, Ceylon, Indo-China, even China proper, and Brazil. King Emmanuel I assumed the title of "Lord of the Conquest, Navigation, and Commerce of India, Ethiopia, Arabia, and Persia", and during his reign Portuguese sailors visited Greenland, the Cape of Good Hope, South America, and China. But this early start was destined to be unproductive. By the end of the sixteenth century they were almost supplanted in the East; while the Napoleonic era brought still further losses. During this upheaval in Europe the Portuguese Court emigrated to Brazil, reversing for a time the relationship between the colony and the mother country.[3] But Brazil became independent in 1825. And by 1844 she had lost all but three minor dependencies in India. Her present colonial empire consists of eight colonies, five of which are in or near Africa. Her total colonies comprise 804,552 square miles, with a population of 8,735,000 in 1920.[4] They are thus in area twenty-two times as extensive as Portugal, with a population nearly 60 per cent. greater.

The colonial trade of Portugal in the early period was a State monopoly, and it was only after 1755 that this system was slowly modified. Many restrictions on navigation and prohibitions on trade continued, and where foreign trade was allowed it was only under differential tariff conditions. In 1809 Portuguese manufactures were given free entry into the

[1] J. W. Root, *Colonial Tariffs*, p. 145.
[2] *Report of U.S. Tariff Commission*, 1922, p. 472.
[3] A. G. Keller, *Colonization*, 1908, p. 161.
[4] See *Statesman's Year Book*, 1920.

colonies. And in 1837 European non-competing manufactures were given entry under duty if carried in Portuguese ships. In 1838 the colonies were assimilated. Between 1844 and 1853 twenty-eight colonial ports were opened to foreign vessels. In all later tariff legislation the preferential system has been retained.[1] Differing tariff arrangements in the Portuguese colonies exist because of concession companies who share in the administration of Portuguese East Africa; while special regime colonies are allowed to regulate their own tariff subject to preferences given to Portugal. The Open Door exists only in that portion of her African colonies falling within the Conventional Basin of the Congo subject to the General Act of Berlin of 1885.[2]

If the Portuguese were the first extensive navigators, the Spanish were the first people of modern times to colonize seriously and on a large scale. They always proceeded inland, establishing cities, missions, and mining camps. They also sought prompt material gains, and, while successful in draining the precious metals of the New World, they were also political conquerors and rulers. But while they succeeded in hoisting their flag over large portions of North and South America, they were unable to hold it against the more successful of their colonial rivals, and with the independence movement in South America in the beginning of the last century, Spain lost all but a fraction of her vast empire. To-day her total holdings cover only 134,760 square miles, with a population of slightly over one million.

Spain's early colonial trade policy was, like most others, one of exclusion and monopoly, infractions of which were punishable by death. Gradually certain ports were opened up, and in the eighteenth century, owing to the success of smugglers in evading restrictions, her trade policy was considerably relaxed. Differential tariffs prevailed all through the nineteenth century,

[1] *Colonial Tariff Policies*, p. 486.

[2] *Infra*, p. 34 ff.

Spain being hardly at all affected by the free trade movement. An intermediate differential duty was applied to goods transported in Spanish vessels. In 1837 her Philippine tariff on certain Spanish imports carried in Spanish vessels was 3 per cent. compared with 50 per cent. on the same classes of foreign goods imported in foreign vessels. The same principle applied to the Cuban tariff.

Spain is a party to the Act of Algeciras limiting her tariff autonomy in Morocco. But elsewhere in her colonies her policy has been and is to-day a policy of high-preferential tariffs both in respect of goods coming from and going to the colonies.

The British, in their colonial activities, followed a whole century behind the Portuguese and the Spanish. But in the first half of the seventeenth century they established settlements in the West Indies, Honduras, Virginia, New England, Newfoundland, India, and in various parts of Africa. The wars of the eighteenth century and of the Napoleonic period, together with the acquisitions made by peaceful means, added Canada, British Guiana, Gibraltar, Malta, Cape of Good Hope, Seychelles, Mauritius, Ceylon, and additional parts of India. British missionaries and traders extended the British claims into the Malay Peninsula, Australia, Tasmania, and New Zealand, and in spite of the loss of the American colonies they entered the nineteenth century with the greatest colonial empire then existing.

In the earlier colonial period the Navigation Acts of 1651 and 1660 were Britain's chief means of controlling colonial trade in the interest of merchants and manufacturers of the mother country.[1] These Acts, which "enumerated" certain articles that could only be transported in British ships, gave

[1] A treaty with Denmark in 1670 provided that "the subjects of the King of Denmark shall not come to the British colonies unless by special licence of the King of Great Britain first desired and obtained".

an effective monopoly to British trade. Through them British shipping is generally credited with securing a vast preponderance in world trade.[1] These were not substantially modified until the nineteenth century.[2] In addition, the British Government in this period added a differential duty in her own favour below the uniform duties which colonial legislatures were authorized to levy on British and foreign goods alike, thus creating a preferential schedule aimed at the protection of British trade and industry.

In the eighteenth century colonial preferences were given (on tobacco) in the British market in addition to various bounties to colonial products, such as iron, indigo, timber, tar, and turpentine, used in shipbuilding. In 1815 a corn law gave a 13s. per quarter differential import preference to American wheat. But it was not until the two decades from 1823 to 1846 that the preferential system was comprehensively inaugurated by a series of Customs Acts,[3] following in rapid succession, either increasing old preferences or adding new ones. By 1840 eighty items were on the British preferential list.

Because of retaliatory measures by the United States, the Navigation Acts were greatly modified between 1823 and 1829 in favour of reciprocal concessions. But import preferences remained in effect. And intra-imperial trade continued to be a monopoly of British shipping until 1849.

From 1849 to 1880 British tariff policy followed the lines of free trade with the concomitant colonial trade policy of the Open Door.[4] Thus, within a period of fifty years after 1815, monopoly and prohibitions gave way to preference, and preference gave way to the Open Door. The last colonial preferences to British imports terminated in 1855, and British preferences to colonial products disappeared in 1860.

[1] Cf. George L. Beer, *The Old Colonial System*, 1912.
[2] *Colonial Tariff Policies*, p. 631.
[3] Cf. Great Britain, Parliamentary Papers, 1905, Cd. 2394.
[4] Although free trade fulfils the condition of the Open Door, the latter does not mean the same thing as free trade.

Until about 1880 commercial treaties made by Great Britain with other countries generally included the colonies by a special clause. After 1880 the movement toward colonial autonomy is noted in a "special exceptions clause" not binding the colony but giving the latter privilege to adhere within a limited time. By a series of bilateral commercial treaties containing the unconditional most-favoured-nation clause, Great Britain, before 1880, not only progressively lowered her own tariffs, but created the Open Door with uniform revenue tariff rates in the colonies, which existed substantially until the World War. The reappearance of tariff preferences in the British Empire will be noted later.[1]

This free trade and Open Door policy of the middle period of the nineteenth century in the British Empire was the result of the prevailing attitude toward trade and colonies. A comprehensive literature exists on the subject. But no writer on this period of history can fail to give special mention to Richard Cobden, who so ardently pleaded the cause of anti-colonialism from the date of his first pamphlet on the question in 1835, *England, Ireland, and America*,[2] until his death in 1865. He stoutly maintained that colonies "drained the financial strength of the mother country".[3] He greatly deplored the fact that Great Britain had about one hundred times more territory to protect beyond the seas than had France. As a Member of Parliament he was constantly urging the limitation of colonial responsibilities and the granting of complete self-government. For Canada he urged complete independence, holding that union with the United States was her natural destiny. He believed that "the independence of the New World had for ever put an end to the colonial policy of the Old".[4] In

[1] *Infra*, p. 73 ff.

[2] Here he challenged the entire system of colonization, saying: "Spain lies at this moment a miserable spectacle of a nation whose own natural greatness has been immolated on the shrine of Transatlantic ambition."

[3] W. H. Dawson, *Richard Cobden and Foreign Policy*, 1926, p. 186. See especially his chapter on "Colonization and Empire".

[4] *Ibid.*, p. 191.

a pamphlet entitled, *How Wars are got up in India: the Origin of the Burmese War*, he made an analysis of colonialism, imperialism, and war which has hardly been more vigorously stated by any modern anti-imperialist. Writing to John Bright, he said, "It will be a happy day when England has not an acre of territory in continental Asia."[1] Nor was he alone in this view of the colonies. After the Rebellion of 1837 in Canada, Lord Durham, who was sent to investigate, recommended that responsible self-government be given to the Canadians. And in the next two decades the settlement colonies of Canada, New South Wales, Australia, Victoria and Tasmania, New Zealand, Cape Colony, and Queensland all received self-government. Even Disraeli, in 1852, wrote to the British Foreign Minister, "These wretched colonies will be independent, too, in a few years, and are a millstone around our necks."[2] Down to the last quarter of the century most of the responsible British statesmen regarded the Empire as a finished dominion and "were determined not to extend it by as much as a square mile of new territory".[3] But the tide soon turned, and, after 1880, the area of British holdings in Asia, Africa, and Oceania increased fourfold. It is this scramble by England and the other Powers for colonies in Africa and Asia, together with the altered colonial trade policies, that mark the next period in our study.

To summarize colonial enterprise and colonial tariff policies prior to 1880, all the colonial Powers started with policies of monopoly and exclusion, adopting the preferential tariff only around the beginning of the nineteenth century. In the meantime Spain and Portugal lost most of their holdings, and, in the remainder, were slow in adopting during the nineteenth century even a system of preference, which still remains high. Holland abandoned exclusion more readily and adopted a

[1] Quoted in Dawson, *op. cit.*, p. 200.

[2] Monypenny and Buckle, *Life of Disraeli*, iii, p. 385.

[3] Cf. Dawson, *op. cit.*, p. 191. However, between 1840 and 1875, Hongkong, Natal, Basutoland, and Griqualand were added to the Empire.

system of moderate preferences, looking toward the Open Door. France, losing an empire and gaining another, adopted a system of marked preferences, looking toward assimiliation. England abandoned both monopoly and preference and adopted the Open Door throughout her vast empire—which, despite her "indifference," was shortly to become vaster—thus giving to the principle the tremendous prestige of a great colonial Power.

Germany, the United States, Japan, Italy, and Belgium, before 1880, did not figure in colonial enterprise, but were to figure conspicuously in the next period, to which we now turn.

CHAPTER II

THE OPEN DOOR UNDER NEO-MERCANTILISM FROM 1880 TO THE PEACE CONFERENCE

I

THREE signal events greatly enhanced the Open Door principle in the decade after 1880: (1) Germany acquired colonies, in all of which she applied the Open Door; (2) Holland abandoned preferential tariffs in 1886 and extended the Open Door throughout her colonial domain; (3) The General Act of Berlin of 1885 was instituted as the first multilateral Open Door treaty, and applied to the vast territory in Central Africa known as the Conventional Basin of the Congo. These gains, added to the British Open Door practice adopted earlier, gave the principle of equal economic opportunity as a colonial trade policy wide application and a large significance. How it worked in each area is examined later.

Another signal event of this period is the emergence of the new colonialism—called neo-mercantilism—in which nearly the whole vast continent of Africa was carved up among the Powers, almost in one swoop—France, England, and Germany taking the largest shares.[1] It is in this period, too, that the United States, Italy, and Japan emerge as colonial Powers.

The causes and results of this sudden revival of interest in the last unclaimed territories available for colonial expansion can only claim our attention in their bearings on colonial trade policy. When it is considered that more than half of the world's land surface to-day, and more than a billion human beings are included in the colonies and "backward countries"

[1] For this period see especially P. T. Moon, *Imperialism and World Politics*, 1926, pp. 75 ff.; George L. Beer, *African Questions at the Peace Conference*, pp. 76 ff.; Leonard Woolf, *Empire and Commerce in Africa*; and P. Leroy-Beaulieu, *De la Colonisation chez les Peuples Modernes*, 5th ed., vol. ii, as among the best secondary sources.

dominated by a few of the Western Powers, it will be seen how largely the colonial policy is affected by markets, raw materials, and the investment opportunities offered in this field. And when it is remembered that no further territories are available, and that oil and rubber resources (to mention only two) lie so largely within colonial areas, the temptation of the holding Powers to partially close the colonial door, by the readoption of preferential and assimilation tariffs, becomes at once apparent. But it is the more apparent in the light of the intense wave of economic nationalism which swept over the industrial nations of the Western world after 1880.[1]

This new economic nationalism leading to changed colonial policy was the result of changed economic conditions, among which we may note the following: first, the United States, Germany, and France were rapidly becoming industrially mature, and in relation to England were threatening her superiority in producing and marketing such articles as cotton goods and steel. Before the close of the century the United States and Germany were both ahead of England in steel production. This meant intense competition for the markets in which to dispose of surplus manufactures. Higher tariffs were placed around metropolitan areas, Germany beginning in 1879, France in 1881, the United States later, causing Jules Ferry, French Prime Minister, to remark in 1885, "What our great industries lack . . . more and more, is markets."[2] Not only colonies but protected colonies appeared to be the solution. Each country hoped the Open Door would be maintained—by all other countries. The British situation was well stated by Sir Frederick Lugard, able colonial administrator, writing in 1893:

"As long as our policy is one of free trade we are compelled to seek new markets; for old ones are being closed to us by hostile tariffs, and our great dependencies which formerly were consumers of our goods are now becoming our commercial rivals. . . . We are account-

[1] Cf. Moon, *op. cit.*, pp. 25–57.

[2] Cf. M. Dubois et A. Terrier, *Un Siècle d'Expansion Coloniale*, 1800–1900, p. 405.

able to posterity that opportunities which now present themselves of extending the sphere of our industrial enterprise are not neglected, for the opportunities now offered will never recur again."[1]

To-day surplus manufactures provide a stronger motive than ever. Colonial markets are growing more rapidly than any other.

A second factor in neo-mercantilism is the remarkable development since 1895 of railways, telegraphs, and steamship lines in every remote part of the hitherto "unoccupied" world. These may be regarded as both cause and effect.

A third factor, bearing still more directly on Open Door policy, was the greatly increased dependence of the Powers on tropical and subtropical products, such as rubber, cotton, cacao, tea, coffee, phosphates, and sugar. Exclusive concessions for the control of such commodities have more than once caused a violation of Open Door policies and agreements.[2]

And finally may be noted, in the period after 1900, the increased rivalry for the profitable investment of surplus capital.[3] The maintenance of equal economic opportunities for the development of railways, rubber plantations, and oil fields with all their subsidiary agencies, has become the supreme test of Open Door agreements and the chief concern of those whose business it is to apply Open Door conditions, whether they be on the Mandates Commission or in colonial offices.

Even the growth of democracy over this period and the spread of the broader principles of political economy as conceived by Smith, Cobden, Bastiat, and Marshall, could not stop this recrudescence of the narrower nationalistic conception of empire. And to-day not only is France assimilating her own colonies wherever possible,[4] but one-time free-trade Britain

[1] Sir F. D. Lugard, *The Rise of our East African Empire*, vol. ii, p. 585.

[2] *Infra*, viii.

[3] Cf. R. W. Dunn, *American Foreign Investments*, 1926; also Moon, *op. cit.*, pp. 30–31, and Leroy-Beaulieu, *op. cit.*

[4] C. Delisle Burns, *Short History of the World*, 1918–28, p. 370. Cf. also R. L. Buell, *The Native Problem in Africa*, i, p. 983, and A. Gide, *Voyage au Congo*, 1928, pp. 99, 104.

has adopted imperial preference, while many of her statesmen are urging that the real end of imperial preference is free trade within the Empire while presenting a united tariff front to the rest of the world.[1] Such a customs union, if not uniform in all parts of the Empire, would nevertheless constitute an assimilation policy within the commonwealth of British nations. Pan-Britannia is mentioned in relation to Pan-Americana and Pan-Europa,[2] an alignment of vital economic and political power which would doubtless tax the peace machinery of the world to the limit.

It was at this stage in the trend away from the Open Door that the mandates principle was introduced, pointing toward a new method of international supervision of territories held by mandate under national administration, and guaranteeing the Open Door in most of them. But before examining this institution we will give some attention to the application of the Open Door by international agreement in the Congo under the Berlin Act.

II

The Berlin Act, the Congo Free State, and the Open Door

Importers and statesmen, explorers and adventurers, soldiers, kings, and missionaries have all played important rôles in the acquisition and extension of colonial empire. But the colonial drama was never more cleverly and brilliantly played than by a Continental king and an English adventurer, using the basin of the Congo for the stage. The king was Leopold II of Belgium, who managed to carve out for himself a huge empire, the Congo Free State, while the Great Powers were hotly competing for the occupation, possession, and division

[1] See L. S. Amery, *The Empire in the New Era*, 1928, pp. 11, 54; also extended discussion in the last two Imperial Conferences. Joseph Chamberlain championed the policy as early as 1896.

[2] Amery, *op. cit.*, pp. 11–12.

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of the rest of the continent. The adventurer was Henry Morton Stanley, a Welshman, who, after being a haberdasher and butcher, crossed the Atlantic to become in turn an Arkansas storekeeper, a Confederate soldier, a Union soldier, a journalist, and again a soldier in Abyssinia. Sent to find David Livingstone, lost in the heart of Africa, he not only found the missionary, but he found an unclaimed empire and, after some further searching, an interested king to claim it.

Leopold was not the first to whom Stanley appealed. British merchants had previously turned a deaf ear to his eloquent accounts of the economic potentialities of this region. Nor did the versatile Stanley rely wholly on the economic appeal. Realizing the force of the missionary motive, he delivered a speech in 1884 before the Manchester Chamber of Commerce, suggesting that one Sunday dress for each native would mean "320,000,000 yards of Manchester cloth" (audience cheering); and if perchance Christianity and civilization succeeded in persuading the natives to cover their nakedness on weekdays as well, the necessary amount of cloth would amount to £26,000,000 sterling per year.[1] But these impressive figures failed to arouse interest in England, much to Stanley's regret, who now crossed to Brussels and found that if Central Africa would not go for Christ, it would go for rubber.[2] A group of Belgian business men, under King Leopold's direction, formed the "Comité d'études du Haut Congo", which secretly sent Stanley back to Africa to carve out an empire.[3] Meanwhile, however—as was the case in 1898, when Kitchener arrived at Fashoda—the French had arrived, not three hours, but fifteen months earlier, and erected the tricolour on the north bank of the Congo. As a consequence, what later became the Congo Free State was confined to the southern bank.

[1] Cf. Moon, *op. cit.*, p. 66, quoting pamphlet issued by Manchester Chamber of Commerce, 1884.

[2] H. A. Gibbons, *The New Map of Africa*, p. 150.

[3] Cf. H. M. Stanley, *The Congo and the Founding of its Free State* vol. i, pp. 26 ff.

But the interesting story must be resumed more prosaically. Enough has been suggested of the tense competitive race for the occupation of Africa to indicate why Leopold of Belgium was advised by the Great Powers to submit his tenuous regime over the great Congo empire to the conditions of the Open Door. However, Leopold's humanitarian and scientific pretensions in Africa were not unmixed with economic ambitions, which made of this Open Door treaty a dead-letter. Let us examine the record more closely.

Portugal, in 1884, pressed a vague claim, based on discovery in 1483, to the mouth of the Congo. Accordingly England concluded, on February 26, 1884, an Anglo-Portuguese treaty recognizing Portuguese sovereignty over the mouth of the Congo and providing for a joint commission to regulate navigation of the river.[1] England was to be given free navigation rights and most-favoured-nation treatment.[2] This would have blocked Leopold's outlet to the sea, but France and Germany were yet to speak. Jules Ferry and Bismarck had further colonial ambitions of their own in Africa, and besides needing each other's support, were pressed by their home merchants to prevent a Portuguese exclusion policy in the Congo. Ferry proposed an international conference to deal with the question, to which Bismarck assented,[3] causing Lord Granville to announce that the Anglo-Portuguese Treaty would not be ratified. The Conference was called, deliberating for three months, at the end of which the General Act of Berlin was drafted and signed by most of the European powers and the United States (which took a prominent part in the proceedings but failed to ratify the Act). Under these circumstances, in

[1] Hertslet, *Map of Africa by Treaty*, vol. ii, p. 713.

[2] Treaties of 1642 and 1654 between Portugal and Great Britain contain old forms of the most-favoured-nation clause. Cf. *British and Foreign State Papers*, 1812–14, vol. i, pp. 478, 484. In these it was stipulated that duties should be "no greater or more grievous than those which shall be demanded from other nations in league with the King of Portugal".

[3] Cf. *Die Grosse Politik*, iii, Documents 687–689, for Bismarck's correspondence with Ferry.

1885, the first general multilateral Open Door treaty was instituted. The convention is known as the General Act of the Conference of Berlin and established provisions for freedom of trade and navigation in the Conventional Basin of the Congo,[1] an area in the heart of Africa much larger than the Congo Free State,[2] to which reference has been made above. The treaty contained certain provisions regarding treatment of natives, but this study will consider only the Open Door provisions.

Relevant articles read as follows:

CHAPTER I. DECLARATION RELATIVE TO FREEDOM OF TRADE IN THE BASIN OF THE CONGO, ITS MOUTHS AND CIRCUMJACENT REGIONS, WITH OTHER PROVISIONS CONNECTED THEREWITH:

Article 1. The trade of all nations shall enjoy complete freedom in all the regions forming the basin of the Congo and its outlets. [Here follows description of area affected.]

Article 2. All flags without distinction of nationality shall have free access to the whole of the coast-line of the territories above enumerated, to the rivers, . . . all waters of the Congo . . . lakes . . . ports . . and to all canals which may be constructed. Those trading under such flags may engage in all sorts of transport, and carry on the coasting trade by sea and river as well as boat traffic, on the same footing as if they were subjects.

Article 3. Wares of whatever origin, imported into these regions under whatsoever flag, by sea or river or overland, shall be subject to no other taxes than such as may be levied as fair compensation for expenditure in the interests of trade and which for this reason must be equally borne by the subjects themselves and by foreigners of all

[1] The Conventional Basin of the Congo includes, besides the Congo Free State, parts of Cameroons, of French Equatorial Africa, Portuguese Angola, Kenya, Uganda, Nyasaland, Ruanda-Urundi, Tanganyika, parts of Rhodesia, and of Italian Somaliland.

[2] The history of the Congo Free State falls into three parts: (1) From 1876 to 1885 it was under the Association Internationale Africaine, organized by Leopold, a complex of national "geographic and philanthropic" societies interested in Africa, of which the Belgian committee was the only serious and active one. It then came to be known as "The International Association of the Congo". (2) From 1885 to 1908 it was called the Congo Free State, now owned and ruled as an independent sovereignty by King Leopold and not subject in any way to Belgium. (3) Since November 15, 1908, it has been a colony of Belgium and known as the Belgian Congo, an area of 900,000 square miles, eighty times larger than the mother country.

nationalities. All differential dues on vessels, as well as on merchandise, are forbidden.

Article 4. Merchandise imported into these regions shall remain free from import and transit dues. . . . The Powers reserve to themselves to determine after the lapse of 20 years whether this freedom of import shall be retained or not.[1]

Article 5. No Power which exercises or shall exercise sovereignty in the above-mentioned regions shall be allowed to grant therein a monopoly or favour of any kind in matters of trade.

Foreigners, without distinction, shall enjoy protection of their persons and property, as well as the right of acquiring and transferring movable and immovable possessions and national rights and treatment in the exercise of their professions. [Here follow provisions relating to protection of natives, missionaries, and travellers.]

Article 6. Freedom of conscience and religious toleration are expressly guaranteed, to the native no less than to subjects and foreigners.

Chapter IV. Act of Navigation for the Congo

Article 13. The navigation of the Congo . . . and its branches . . . is and shall remain free for the merchant ships of all nations equally. . . . [Here follow uniform regulations] . . . no exclusive privilege of navigation will be conceded to companies, corporations, or private persons whatsoever.

These provisions are recognized by the Signatory Powers as becoming henceforth a part of international law.

Article 14. The navigation of the Congo shall not be subject to any restriction or obligation which is not expressly stipulated by the present act. [Here follow express uniform stipulations in regard to landing dues, harbour dues, lighthouse dues, pilot dues, beacon and buoy duties.] The tariffs by which the various dues and taxes enumerated in the preceding paragraphs shall be levied shall not involve any differential treatment and shall be officially published at each port.

Article 16. The roads, railways, or lateral canals . . . shall be considered . . . as equally open to the traffic of all nations.

As regards the tariff of these tolls, strangers and the natives of the respective territories shall be treated on a footing of perfect equality.

Article 17. There is instituted an International Commission charged with the execution of the present act of navigations.[2]

[1] A 10 per cent. duty for revenues was permitted by a revision of the Berlin Act in 1890, known as the Brussels Act.

[2] This treaty was signed and ratified by fourteen States, viz. England, France, Germany, Belgium, Holland, Denmark, Norway, Sweden, Austria-Hungary, Italy, Russia, Spain, Turkey, and Portugal. Cf. Hertslet's *Commercial Treaties*, vol. xvii, pp. 62 ff.

In order to provide administrative revenues to "the signatory or adhering Powers who have possessions or protectorates in the said Conventional Basin of the Congo", the Berlin Act was revised in the Declaration of the Brussels Antislavery Conference, July 2, 1890, permitting an import duty of 10 per cent. *ad valorem* at the port of entry. "Nevertheless," the revision stipulates, "it is understood that no differential treatment or transit duty shall be established." A special treaty with the same provisions was made with the United States in 1891, since the United States had not ratified the Act of Berlin, but had subsequently made a separate treaty with the Congo Free State admitting American goods without import duties.

Another contingent Convention was made under the Protocol of Lisbon in 1892, whereby the Powers having contiguous possessions to the Congo Free State lying within the limits of the Conventional Basin agreed, as to the rates on articles of import and export, to be charged 10 per cent. duty or less.

Also, it is to be noted, the Brussels Convention imposed severe restrictions on the "importation, manufacture, and sale of liquors" and the introduction of firearms.[1]

A study of these precise and explicit Open Door provisions will convince the most scrupulous international lawyer that a more perfect Open Door document could hardly be invented.[2] The words "perfect equality", "without discrimination", "no differential treatment", "no exclusive privileges", or their equivalent, occur at least fifteen times in the Berlin Act, its revisions, and contingent agreements. Moreover, the Berlin Act was expressly given the recognition of international law.[3] Although provision was made in the Act (Article 17) for the reference to an International Commission of contested points in its practical application, no such Commission was, in fact, ever constituted. And evidence accumulates to show that,

[1] W. M. Malloy, *Treaties*, etc., vol. ii, pp. 1964, 1993.

[2] See B. B. Wallace, in *Annals of the American Academy of Political and Social Science*, March 1924, p. 212.

[3] Ch. iv, Art. 13, of the Berlin Act.

between 1885 and 1908, open violation of this admirable effort at general Open Door agreement by treaty virtually nullified its noble intentions.

The Berlin Act, like the Mandates Agreement (Article XXII of the League Covenant), has two facets: (1) protection of the native races, and (2) equality of commercial opportunity—or the Open Door. In studying both systems these two interests constantly stand in close relation. Discussions of one aspect are always mixed with the other, a circumstance not without reason. In any colonial enterprise the natives are more likely to suffer in various ways when the Open Door is not observed, since exclusive exploitation is almost certain to be more ruthless than is the case where States and their nationals stand watch upon each other. Moreover, Open Door conditions will work to the economic as well as the social advantage of the natives, who can sell without discrimination in the dearest market and buy under competitive conditions in the cheapest market.[1] However, the public has rightly shown more interest in the condition and treatment of the natives under colonial administration and the literature on this subject pertaining to the "Congo question", the "atrocities and native oppression" practised in the Free State under Leopold II, is voluminous.[2]

The atrocities, it was seen, were largely the work of the agents of the State and of the concession companies, through both of which Leopold managed, in spite of the Open Door provisions of the Berlin Act, "practically to monopolize the trade of the whole region beyond the small district of the lower Congo".[3] The exclusive policy began with the land regime. This was followed by a system of "taxation" requiring natives

[1] Cf. W. E. Rappard, *Minutes of Mandates Commission*, xii; also B. B. Wallace, "Preferential Tariffs and the Open Door", in *Annals of the American Academy*, March 1924, p. 218.

[2] See especially N. D. Harris, *Interventions and Colonization in Africa*; Masoin, *Histoire de l'État Indépendant du Congo*; E. D. Morel, *Red Rubber*; F. Cattier, *Étude sur la situation de l'État Indépendant du Congo*, Brussels, 1906.

[3] *Colonial Tariff Policies*, pp. 91 ff.

to pay in quantities of rubber and ivory so large as to amount to confiscation. Other means used to violate the Open Door pertain to the taxation of the trading companies, the control of navigation, the lack of currency, and the State's military policy.[1]

The Land Regime

The land regime was instituted by a series of decrees promulgated by the King, especially between 1885 and 1890, which alienated all "vacant lands" from the natives and declared them "as appertaining to the State". The area of "vacant lands", so declared, grew larger and larger. Restrictions as to the use of these lands for the exploitation of rubber, minerals, or other products grew steadily more severe. Ivory was declared to be State property. Vegetable products could be gathered only under special concessions.[2] Vigorous protests led to the decree of July 9, 1890, "to regulate the collection of ivory in the State so as to favour free competition".[3] The Government also surrendered, to private individuals, the right to collect ivory in certain territories in the State Domaine. But a *droit de patente* of 2 francs per kilo was required for this privilege in addition to an export duty of 2 francs.

In September 1891, however, Leopold issued a secret decree commanding the commissioners of certain districts "to take the urgent and necessary measures to conserve for the disposal of the State the products of its Domaine, notably the ivory and the rubber".[4] This decree was followed by others more restrictive in scope and character, until to the trading companies' protest was added that of the Belgian Ministry itself, calling attention

[1] See H. H. Johnston, *The Opening Up of Africa*, pp. 214, 238, and J. S. Keltie, *The Partition of Africa*, pp. 225 ff., for general description of economic equality in the Congo. For a defence of Leopold II, see Albert Chapaux, *Le Congo*, 1894.

[2] These decrees, and others, are recorded in the *Bulletin Officiel* for 1885, 1886, 1887, and 1889.

[3] *Ibid.*, 1890, p. 80.

[4] Emile Vandervelde, *La Belgique et la Congo*, p. 38.

to the Treaty of Berlin. The Governor-General of the Congo, Camille Janssen, resigned rather than enforce the policy.[1] Leopold's position, however, was strengthened by the opinion of nine eminent jurists, to whom the protests were referred, who held that the international servitudes in the Berlin Act could be interpreted restrictively in the sense that monopolies and privileges prohibited by the Act referred to all States alike except the Congo Free State.[2] This decision, if valid, would in itself have virtually annulled the Berlin Act. The opinion, however, was widely controverted.

By decree, in 1892, the State Domaine was now divided into three parts:

(1) The Domaine Privé, a large region in northern Congo, which was restricted to the exclusive exploitation of the State, its agents, or particular individuals authorized by them. Only the State could dispose of the product.

(2) The Reserved Area, another large region in the east and south-east, which was held for exploitation at some time in the future when circumstances would permit.

(3) The Free Area in the south-west, which was left open for individual subjects to rights previously acquired and to concessions later to be made. This freedom was, however, subject to a tax of one-fifth of all the rubber privately collected. Or, as an alternative, the trader might pay the Government 25 centimes per kilo.

Somewhat later the Reserved Area was added to the Domaine Privé. And in 1896 there was established the Domaine de la Couronne, enlarged in 1901, which reserved an area ten times the size of Belgium exclusively for the benefit of the King's private fortune. A portion of the Free Area was included in the King's Domaine.[3]

In these vast areas restrictions and prohibitions were enforced with vigour and dispatch whenever violations were detected.

[1] F. Cattier, *Étude sur la Situation de l'État Indépendant du Congo*, p. 63.
[2] *Ibid.*, p. 63.
[3] *Colonial Tariff Policies*, pp. 94, 95.

In 1895 Charles Henry Stokes, an English subject, employed at the time by the German Government, was suspected of supplying arms to the Arabs. The Belgian officer, Lothaire, courteously invited him to come to his camp, and Stokes, accepting in good faith, was arrested and summarily executed. Both the English and German Governments demanded full investigation of the episode, which revealed so many irregularities that the State admitted and paid a liability of 250,000 francs to the injured parties. The later acquittal of Lothaire did not improve the increasingly strained relations existing.[1]

But exploitation was not only the practice of the State. The trading and concessionary companies, mostly Belgian corporations, operated under monopoly privileges and took over many of the functions of State agents.[2]

In the "Free Areas" restrictions became more oppressive with each successive decree. Commercial ventures especially were severely treated under these regulations.

Taxation

In these ways the land regime itself virtually annulled Open Door conditions in the territories of the Congo Free State. But monopoly was rendered more complete by a system of labour taxation whereby the State gained almost complete control of the time and energy of the native himself. The natives were forced to produce a certain quota of rubber or other product each month. Failure to do so was met by the severest brutality. In some cases the native's wife or child might be kept as hostage until the rubber was produced. Not only did such a system interrupt the ordinary operations of commerce, but whole villages began to disappear from starvation because the enslaved natives had no time to cultivate foodstuffs.[3]

[1] Cf. A. B. Keith, *The Belgian Congo and the Berlin Act*, p. 125.

[2] Beer, *op. cit.*, p. 79.

[3] See *Commission of Inquiry Report*, 1906, p. 48; also F. Cattier, *op. cit.*, p. 183.

Small commercial firms were discriminated against, after 1893, by Leopold, in favour of the large concessionary companies, who gave him large blocks of stock, often 50 per cent. This was done by imposing excessive taxes on ivory exports, a product in which the State began to compete. Taxes were also laid on buildings, steamers, employees, and road caravans. Though some of these taxes were lowered after 1890, when the Brussels Act permitted a uniform import duty, the State accompanied this with a confiscation of one-half of all ivory collected. In short, the State and the large concessionary companies together monopolized business, and small firms, Belgian as well as foreign, were almost taxed out of existence. Keith writes, "Complete conversion of the State into a great commercial concern was formally signified in the fact that no effort was made to maintain the essential distinction which should have existed between products purchased from the native and those received in payment of taxes."[1] And to make matters worse, the officials of the State were often stimulated by commissions to get business into the hands of the State acting as a commercial enterprise.[2]

Control of Navigation

The State had from the first a fleet of its own on the Upper Congo. But in 1897 it purchased certain vessels from the Société du Haut Congo, and later it acquired a considerable fleet from the Dutch Company, so that by 1906 the State had a practical monopoly of Congo navigation. Other vessels owned by concession companies carried only their freight, and this on the condition of paying certain charges to the State. Passengers carried on company vessels had to receive special permission from the State. And rates charged on other vessels

[1] Keith, *op. cit.*, p. 124.

[2] Although this was denied by the State, it was admitted by Cattier in *Droit et Administration de l'État Indépendant du Congo*, p. 243. See also Masoin, *Histoire de l'État Indépendant du Congo*, i, pp. 94, 95.

had to equal State rates plus the cost of maintaining the service.[1] In addition, private vessels could cut no wood within a half-hour's run of the States wood piles, which were all located in the best places. Moreover, the few small vessels belonging to missionary societies could not engage in passenger and freight business other than their own. Finally, State vessels gave priority to the State's cargoes and passengers, putting private companies altogether at a distinct disadvantage in the business of the river, whose navigation was so specifically guaranteed under Open Door conditions in Articles 13 to 25 of the Berlin Act.[2]

Absence of Currency

If further proof were needed to show the complete breakdown of Open Door practice in the Congo, it would be supplied by an examination of the currency situation. Scarcely any currency existed. The excuse given was that the natives had little or no notion of money and its uses.[3] However, this does not seem to correspond with experience in other similar colonies. The real reason relates to this question of State monopoly of trade. Since the State and the concession companies actually were the largest employers and traders, they could more easily retain their monopoly by crushing those firms and traders who only wished either to buy or sell goods, a one-sided transaction which would require a medium of exchange. And as we have seen before, the State compelled the natives to produce rubber by imposing a rubber tax, for which there would have been less reason had a currency system prevailed. While this situation obtained more especially in the Upper Congo, it was equally the case in the Lower Congo, where scarcity conditions required the legalization of French currency.[4] Thus the absence of

[1] Frederick Starr, *The Truth about the Congo*, pp. 64 ff. See also *Parliamentary Papers*, Cd. 3880 (1908), p. 10, and *Colonial Tariff Policies*, p. 101.
[2] *Supra*, p. 38.
[3] Cf. *Bulletin Officiel*, 1907, p. 216.
[4] *Parliamentary Papers*, Cd. 4079 (1908), p. 5.

currency intensified the private trader's disadvantage in his opportunities for selling. The State stood to gain in both directions.

Trade of the Congo

The effects of all the foregoing methods of gaining monopoly control and violating the Open Door may be observed in the changes occurring in the comparative trade statistics.[1] From 1892 to 1908 Belgium's share of the total import trade of the Congo Free State increased from 38 per cent. to 74 per cent. In the same period that of England declined from 30 per cent. to 9 per cent., and that of Holland declined from 11 per cent. to 2 per cent.

In quantitative figures of export and import totals and of special products like ivory and rubber, the growth of Belgian control is equally striking. Before 1885 Belgian trade in the Congo was a negligible proportion of the total. But from 1888 exports to Belgium increased from 249,884 francs to 12,882,901 francs. In the same year exports to Holland dropped from 4,493,177 francs to 2,348,097 francs, in spite of Dutch trading interests in the Congo of long standing. And to Britain the exports (1888–97) dropped from 937,027 francs to 339,890 francs.

Import figures are equally enlightening. Between 1893 and 1897 imports from Belgium to the Congo increased from 4,423,000 francs to 16,272,000 francs, whereas Britain's import trade to the Congo remained stationary, or 2,591,237 francs compared with 2,593,247 francs.

In 1895 97 per cent. of the ivory exported from the Congo went to Belgium. After 1896 rubber became immensely more important than ivory, and on this, Leopold, who had effected a virtual monopoly of rubber, built up his fortune, estimated at 15 million dollars.[2]

[1] Figures taken from *Bulletin Officiel de l'État Indépendant du Congo.*

[2] Sir Harry Johnston estimated that Leopold's Congo estate netted him 20 million dollars. Much of this was said to have been spent in laudable enterprises, such as beautifying cities and making Ostend a "bathing city" unique in the world. Cf. Moon, *op. cit.*, p. 87.

All these facts and figures came to be regarded as sufficient proof that "whatever the intention of the Berlin Act, it had not succeeded in securing anything like equality of commercial opportunity".[1] And although a majority of the trade of an Open Door colony inevitably tends to go to the home country for perfectly obvious and legitimate reasons, the vast proportion of the trade so diverted in the case of the Congo was *prima facie* evidence against Leopold and the State.

Closed Door Protested

By 1898, when almost 90 per cent. of the Congo export trade was going to Belgium, it was inevitable that the other signatories to the Berlin Act should voice a vigorous protest. Traders, travellers, and missionaries returning from the Congo supplied the detailed evidence so indisputably attested by the trade figures. Nor could it be said that these reports were dictated by commercial and religious jealousy, for prominent Belgians like Vandervelde, Cattier, Vermeersch,[2] and Lorand were equally unsparing in their criticism of the dual rôle of King Leopold, who was constitutional monarch of Belgium and absolute monarch in the Congo in more senses than one.

British and American legislative chambers passed resolutions expressing dissatisfaction with these violations of the Berlin Act.[3] German merchants also protested the monopoly of trade. In France opinion was divided. French official opinion could not protest Leopold's land regime, since a similar scheme was being followed in the French Congo.[4] Finally, on August 8,

[1] Keith, *op. cit.*, p. 128; also Cd. 8648 (1908), p. 140 ff., and J. S. Keltie, *The Partition of Africa*, p. 225.

[2] Cf. A. S. J. Vermeersch, *La Question Congolese*, Brussels, 1906. Vandervelde and Cattier previously cited.

[3] Resolution introduced in American Senate by Senator Lodge, December 11, 1906. Numerous British Parliamentary Papers refer to the subject. See especially Cd. 1933 (1904), 3450 (1907), 3880 (1908). Also *Cambridge History of British Foreign Policy*, vol. iii, pp. 424 ff.

[4] Keith, *op. cit.*, p. 129. See also Johnston, *The Opening Up of Africa*, p. 214.

1903, the British Government addressed a dispatch to the other signatories to the Berlin Act (and to the United States) calling attention to its trade violations and to the prevailing abuses to the natives now so vigorously exposed by the Congo Reform Association.[1] This dispatch suggested the reference of the case to the Hague Tribunal.

The reply of Leopold for the Congo Free State, dated September 17, 1903, was violent. Besides denying the charges, he drew comparisons unfavourable to British colonial administration and ended by absolutely denying the right of the Hague Tribunal to deal with any question of an internal character.

Here was the difficulty in submitting the case under treaty to judicial procedure. The Berlin Act was specific, but not specific enough. It did not explicitly mention that the commercial equality clauses were to cover the proprietary rights of the State, or of Leopold, in the Congo. And these personal proprietary rights, as we have seen, covered the greater part of the area in question. Moreover, as noted above, the Berlin Act failed to make any provision for its effective interpretation and continuous application. No periodic conferences of the signatories were called and no international body was created to deal with the supervision of the Act. In short, the Berlin Act was set adrift to interpret and apply itself. We will revert to these points again in our study of the mandates administration.

To conclude the sad history of the Berlin Act under Leopold, it remains to mention the special report of Roger Casement,[2] sent to the Congo to investigate conditions, an investigation which confirmed previous knowledge. The British Government sent the Casement report to the State (Leopold) on February 11, 1904, the latter, replying on March 12th, again

[1] The work of E. D. Morel in this connection is a matter of record. See his *Red Rubber*, first published in 1906 and going through four editions, giving the story of the rubber slave trade which flourished on the Congo from 1890 to 1910.

[2] After Casement's execution in connection with the Irish conspiracy, certain writers attempted to discredit his Congo revelations. The absurdity of such reasoning is patent.

denying the allegations but promising to conduct a searching inquiry.

The Commission of Inquiry was composed of M. E. Janssens, Advocate-General in the Court of Appeal of Belgium; Baron Nisco, President *ad interim* of the Appeal Court at Boma (Congo); and Dr. E. de Schumacher, Councillor of State and head of the Department of Justice of Lucerne. The Commission arrived at Boma on October 5, 1904, proceeding to Stanleyville, and returned to Boma on February 14, 1905, a period regarded too short for an investigation of this magnitude.

A long delay followed,[1] but the report was finally published on November 4, 1905, when the reasons for this delay became apparent. While the evidence taken by the Commission was suppressed by Leopold, the report itself began by praising everything that could be found to praise in the Congo. Referring to forced labour, the Commission even approved of this as the only means of exploiting the Congo, but denounced the method of enforcing it. Then, turning to the land regime, it condemned the State's policy outright. It also disapproved the concession system and the use of native sentinels by the companies. Finally, even this well-disposed Commission had to report that the commercial clauses of the Berlin Act were practically nullified and that free trade ought to be restored.

Leopold now made the clever move of appointing a commission of fourteen members to remedy abuses. Again there was delay. Even the Belgian Chamber as well as the British House of Commons urged acceleration in beginning the reforms. This led to the issuance of a number of reform decrees by the King. A land decree gave the natives more rights. Tax collection was taken away from the companies and reserved to the Government. The Domaine Privé was made the Domaine National. And the Domaine de la Couronne was changed to

[1] *Commission of Inquiry Appointed by the Congo Free State Government. Report on the Congo.* Putnams, 1906.

Fondation de la Couronne. Also a special advisory council to the King was named.

But a public fooled so often was not easily persuaded that a real change would take place. Sir Edward Grey admitted that "an effective application of these reforms might constitute great improvement",[1] but the British Parliament was quite generally of the opinion that only a radical change in the regime could reverse the policy of the State.

On February 26, 1907, Sir Edward Grey declared that the Congo Free State had "lost its moral right to international existence and expressed his readiness to give political effect to his statement".[2] And on November 18, 1907, in the King's Speech to the House of Commons, it was desired "to see the Government of that State (Congo) humanely administered in accordance with the spirit of the Berlin Act".[3] The United States also demanded cessation of abuses.

It was generally taken for granted that the Belgian Government would succeed to Leopold's rights in the Congo, but the Belgian people naturally did not wish to be coerced into this position under conditions which reflected too much discredit on their King. There was also some question whether this transfer could be made without the consent of all the parties to the Berlin Act. The Congo, however, was heavily mortgaged to Belgium, and there has long been a party in Belgium who regarded this colony as the only assurance of Belgium's economic future.

The transfer from King Leopold to Belgium was made on November 14, 1908, with very general popular satisfaction and hope for improvement, although Great Britain refused to accord recognition until the Government was reasonably assured that the Open Door was applied. But the Congo Free State now becomes the Belgian Congo, still subject to the provisions of the Berlin Act.

[1] Cf. Keith, *op. cit.*, p. 135. [2] *Ibid.*, pp. 135–136.
[3] *Cambridge History of British Foreign Policy*, iii, pp. 424 ff.

III

The Belgian Congo and the Open Door

Thoroughgoing reforms were shortly introduced into the Congo by the Belgian Government.[1] Between 1910 and 1912 the various State monopolies on vegetable products were abolished. The holdings of the large companies were reduced and commercial firms were deprived of all governmental powers. Officials were paid a sufficient salary to obviate the necessity of the abominable commissions. Currency was introduced and taxes and other payments made in coin. The land regime was radically altered.

All these reforms, however, had little immediate effect on the direction of trade, which still continued to go largely to Belgium. But the war swept away all Belgian commerce, which during the period largely went to England and France.

The post-war revision of the Berlin Act was signed at Saint-Germain-en-Laye on September 10, 1919, but has not been ratified by the necessary States to put it into force.

This treaty retains all the Open Door provisions of the Berlin Act but removes the 10 per cent. maximum on import duties, a rate found too low to produce the necessary revenues. Even so, the Belgian Government, deprived of profitable monopolies and assuming the debts of the Free State, has struggled with an annual deficit averaging 16 million francs for the years from 1920 to 1924.[2] The colony's debt in 1924 was 543 million francs. But the trade of the Congo has shown a remarkable increase in recent years, and the Belgian people look optimistically towards the future. Copper is replacing rubber as the chief item of export. Palm-oil, used in making soap, is produced by Lever Brothers, who received, in 1911, concessions

[1] Beer, *op. cit.*, p. 80. In 1917 it was reported from the Belgian Colonial Office that all but three of the concessions had been rescinded.

[2] *Statesman's Year Book*, 1925.

giving them large areas in which they have a monopoly of oil-palms. Other foreign capital shares in the important concessions, notably copper.

The percentage of trade going to Belgium is shown in the following table:[1]

	1924.	1925.	1926.
Imports	56	56	55
Exports	41	46	52

While the Open Door policy cannot be said to be the deliberate choice of Belgium, there seems, nevertheless, to be an honest attempt to put the Berlin Act into practice. The Belgian Congo is no longer the subject of exceptional complaint.

IV

Summary

The violations of the Open Door provisions of the Berlin Act were due to several inherent weaknesses. Firstly, certain signatories, like France and Portugal, for example, were not friendly toward the policy and did not practise it in their own neighbouring colonies. Secondly, its geographical limits did not correspond to political boundaries. Thirdly, no machinery for the administration of the Act was constituted. Fourthly, the language of the Act was so wide that any doubtful point uncovered was taken by Leopold to be admissible. Hence when the Act stated that no Power "shall be allowed to grant a monopoly or favour of any kind in matters of trade", the King saw that if he could not "grant" a monopoly he was not pro-

[1] Cf. *Bulletin Commercial*, No. 45, November 1927, p. 2479.

hibited in "exercising" a monopoly himself. Exercise it he did and was able to get eminent judicial opinion to defend his case. Moreover, the case is further complicated by the fact that all Governments have held the right to exercise certain monopolies of a fiscal or administrative character in Open Door areas. Public service, too, must of necessity be monopolistic. The granting of concessions is a practice so general that no nation is in a position to draw a sharp line to represent dishonest procedure. Moreover, such questions cannot easily be settled judicially. An international commission to consider each case on its merits is perhaps the only solution. Of this more will be said later.

CHAPTER III

THE OPEN DOOR UNDER NEO-MERCANTILISM FROM 1880 TO THE PEACE CONFERENCE (*continued*): GERMANY; THE BRITISH EMPIRE

A

GERMAN COLONIAL ADMINISTRATION AND THE OPEN DOOR. 1884–1914

I

Colonies Acquired in Protest to the Closed Door

On April 24, 1884, when Bismarck announced officially that a section of the coast of South-West Africa was under German protection, the German colonial empire began. On June 28, 1919, when Herman Müller, German Foreign Minister, affixed his signature to the Treaty of Versailles—Article 119 of which reads: "Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions"—the German colonial power ended. Throughout her colonial career and over her entire colonial area, Germany adopted and practised the Open Door policy. Because these territories now comprise the "B" and "C" mandates, which will be examined in regard to mandatory Open Door administration in later chapters, an historical and descriptive treatment will be given here.

By 1914 the German colonial empire consisted of three groups, as follows:

(1) *In Africa.*—German South-West Africa, German East Africa (now comprising Tanganyika and Ruanda-Urundi), Kamerun and Togo—all acquired in 1884 and 1885.

(2) *In the Pacific Ocean.*—German New Guinea (including Kaiser Wilhelm's Land, the Bismarck Archipelago, the Caroline, Pelew, Marianna, Solomon and Marshall Islands), and a portion of Samoa.

(3) *In Asia.*—The leased territory of Kiaochow.

The area and population of these territories in 1913 is shown in the table on page 56.

The steps leading to the acquisition of a colonial empire so vast in extent, in so short a time and so late in the history of colonial expansion is in itself an epic tale. Colonial empires, contrary to the popular view, are not usually the result of deliberate design. Just as the particular colonial policy adopted, once colonies are possessed, is dependent upon the prevailing economic and political philosophy of the time, so the acquisition of colonies grows out of current views and conditions.[1] It was so with Germany, both as to acquisition and as to colonial tariff policy pursued. Expansion in some direction was inevitable after the unification of Germany in 1871. But the prevailing view of Bismarck and the German people was that such expansion should occur on the continent of Europe, perhaps toward the east and south. When France offered certain colonies to Germany in 1871 in place of Alsace-Lorraine, Bismarck curtly replied: "For Germany to possess colonies would be like a poverty-stricken Polish nobleman acquiring a silken sable coat when he needed shirts."[2]

At this time, it will be recalled, free-trade ideas were dominant in England, somewhat current in France, and the corresponding liberal trade policies prevailed in their colonies. Why should Germany have colonies when the Open Door obtained in the colonies administered at the expense of other States? The National Liberal Party, with the free-trade tendencies, was very powerful in Germany at this time, and its leading spokesmen

[1] A. Girault, *The Colonial Tariff Policy of France*, p. 8.

[2] Quoted in H. Poschinger, *Bismarck als Volkswirt*, vol. i, p. 63.

TABLE I

Area and Population of the German Colonies[1]

Colony.	Area in Square Miles.	Population (1913).					
		Total.	Per Square Mile.	Native.	White.	Other.	Per Cent. White.
East Africa ..	384,000	7,666,336	20	7,646,000	5,336	15,000	0·07
Kamerun.. ..	298,000	2,652,871	9	2,649,000	1,871	2,000	0·07
S.W. Africa ..	322,000	98,830	0·3	81,000	14,830	3,000	15·01
Togo	34,000	1,032,368	30	1,032,000	368	48	0·04
New Guinea ..	95,000	603,427	6	600,000	1,427	2,000	0·24
Samoa	1,000	38,544	38	35,000	544	3,000	1·41
Kiaochow ..	193	194,470	1,000	187,000	4,470	3,000	2·13
Total ..	1,134,193	12,286,846	10·83	12,230,000	28,846	28,048	0·234

[1] Cf. *Statistisches Jahrbuch für das Deutsche Reich*, 1915, p. 457.

considered colonies as an anachronism.[1] But when, a few years later, colonial Open Doors were being closed against Germany, and her overseas merchants and traders were complaining against discriminatory and unfair treatment, the policy of Germany began rapidly to change. Thus it was the merchants and traders who, from 1871 to 1876, protesting against the closed door, pushed and led the movement which finally resulted in the founding of Germany's own colonial empire.[2]

It was during these years that Germany followed the policy of "diplomatic guardianship", to see that proper economic opportunities were accorded to German nationals in other colonies. With this in view the Consular Service was greatly enlarged and extended. But the traders became more and more dissatisfied. The crisis came in 1875, when the British took control of the Fiji Islands, where Germans had owned plantations and traded with the natives for many years. After taking possession, England passed the Statute of Limitations, whereby natives had all their debts, contracted before 1871, cancelled. Most of the creditors happened to be Germans. Also, many of the German landholders of the Fiji were dispossessed. At the same time there were similar complaints coming from the German settlers on the Samoan Islands. Then, too, in 1875 Spain passed an order requiring all traders with her scattered islands in the Pacific first to call at the Philippines to pay a duty. Besides, in certain South American States legislation was passed inimical to German interests. In others there were revolutions against which Germans had no protection. In short, the dream of "equal opportunity in overseas trade under diplomatic guardianship" was receiving some severe blows. German commercial interests became increasingly insistent for more adequate protection.

These incidents were determining in the attitude of Bismarck. In March 1875 he sent a strong note to Spain protesting against

[1] W. H. Dawson, *The Evolution of Modern Germany*, pp. 344 ff.
[2] Cf. M. Townsend, *Origins of Modern German Colonization*, p. 36.

certain new customs regulations in the Zulu Islands. His words, very revealing as to colonial policy, were as follows:[1]

"Since the German Government has hitherto entirely refrained from following any definite colonial policy it is all the more called upon to defend its trade from attack. . . . Spain cannot according to any of the outworn mercantilist theories of a past age of discovery, assert her sovereignty over lands hitherto open to trade, where German merchants have founded factories and depots at great cost, sacrifice and trouble."

At the same time German protests were sent to the British Government in regard to Fiji, but the unsatisfactory reply was finally received that "the matter had been referred to the Colonial Office".

The failure of "diplomatic guardianship" as a trade policy led to the adoption, from 1876 to 1880, of a policy of trade agreements and commercial treaties in which German nationals were to be specifically guaranteed "complete equality of opportunity . . . with all other nations".[2] A naval base was secured in Tonga in 1876. In 1877, by treaty, Spain accorded Germany complete freedom of trade with Zulu.[3]

But in presenting the Samoan Treaty to the Reichstag, Herr von Bülow, Foreign Secretary, said: "We do not wish to found colonies. We desire no monopoly against others. We only wish to guarantee the rights of Germans in shipping and trade."[4] The debates on the treaty were centred on the point of trade protection.

However, in 1879 Germany abandoned free trade for a protective policy, and, as was the case in France and England, repudiation of free trade was a tremendous stimulus to the colonial movement. This movement was not only confined to the agitation of the merchants and traders already noted. In his *National System of Political Economy*, published in 1841, Friedrich List had already urged a strong colonial policy.

[1] *Anlagen des Deutsches Reichstages*, 1875, Aktenstück, No. 205.

[2] Cf. Preamble of Samoan Treaty, 1879. This treaty included most-favoured-nation stipulations, as well as coaling-station privileges.

[3] Hertslet, *Commercial Treaties*.

[4] *Verhandlungen des Deutsches Reichstages*, June 13, 1879, p. 1603.

Others, like Bucher, Friedel, Roscher, and Wappaus also stressed the acquisition of colonies for reasons of economic necessity.[1] And Heinrich v. Treitschke, as Professor in the Universities of Freiburg, Kiel, Heidelberg, and Berlin from 1863 to 1890, and as member of the Reichstag for almost twenty years after 1870, was a powerful exponent of German expansion through the acquisition of colonies. "Every virile people", he said, "has established colonial power."[2]

The usual colonial societies were formed, which exploited every possible motive, economic, scientific, missionary, and patriotic. The movement had its popular propagandists in Hübbe-Schleiden and Heinrich Fabri.

But all these colonial enthusiasts still represented a minority before 1880, and Bismarck, though himself beginning to change after the failure of diplomatic guardianship in 1876, was apparently of the opinion that the time for colonial expansion had not yet come. He believed that a wider basis of popular demand must precede such an enterprise. This was being furnished, in part, by the closing trade doors already noted. But perhaps more immediately significant was the tremendous increase in German emigration between 1878 and 1882. It was everywhere felt that places must be provided under the German flag for these thousands of emigrants.[3] In 1878 the emigrants numbered only 46,371, while three years later the total was 247,332.[4] The latter figure proved to be the highest emigration

[1] See L. Bucher, *Bilder aus der Fremde*, Berlin, 1862, and E. Friedel, *Die Gründung Preussisch-Deutscher Colonien in dem Indischen Ozean*, 1867.

[2] H. Treitschke, *Politics*, 1898.

[3] This motive is well described by Paul S. Reinsch, *World Politics*, pp. 10 ff.

[4] Emigration figures, 1878 to 1887, and 1893 to 1897:

1878 .. 46,371	1883 .. 201,314	1893 .. 87,677
1879 .. 31,763	1884 .. 149,065	1894 .. 40,964
1880 .. 149,769	1885 .. 110,119	1895 .. 37,498
1881 .. 247,332	1886 .. 83,225	1896 .. 33,824
1882 .. 231,943	1887 .. 104,787	1897 .. 24,631

According to the *Statistisches Jahrbuch*, 1915, pp. 11, 42, Germany became a land of surplus immigration by the end of the last century. See also I. A. Hourwich, *Immigration and Labour*, pp. 180 ff.

point reached. As will be seen above, there was a sharp decline after 1883, and again, after 1893, emigration dropped to a level practically maintained during the following thirty years.

Although the marked exodus of German population from 1880 to 1884 came just at the time when this argument was needed to press the case for colonies at home and abroad, later events in Germany and later conditions in the colonies combined to render the emigration argument unsound and unavailing. These factors, too, changed the character of her colonial trade policy. First, Germany was rapidly changing from an agricultural to an industrial country. This tremendous increase in factories and industrial activity gave an outlet for the population at home. They no longer exported human beings, but goods.[1] Next, scarcely any of the territories in Africa and in the Pacific which were available proved habitable for a white population—arid South-West Africa and the highlands of German East Africa were the possible exceptions. And, as noted in Table I, the total white population of all German colonies in 1913 was only 28,000, of whom 10,000 were non-German.

The important change which this knowledge wrought in German colonial policy was that while starting with the object of colonies for settlement purposes, they came to be regarded rather as sources of necessary raw materials and, to a lesser degree, as markets.[2]

But, reverting to the acquisition of the colonies themselves, trade exclusion and "excess" population[3] created by 1883 the state of mind in Germany favourable for the next step. The immediate threat of the Anglo-Portuguese (unratified) Treaty of February 1884[4] concerning control of the Congo, also served to cause great alarm among the German traders, who did not wish to see any further extension in Africa by another Euro-

[1] W. H. Solf, *Colonial Policies*, p. 18.

[2] See article by Professor M. Bonn entitled "German Colonial Policy", in *United Empire Magazine*, v (1914), pp. 131, 132.

[3] Cf. Beer, *African Questions at the Peace Conference*, p. 5.

[4] *Supra*, p. 36.

pean Power, and especially not by a country like Portugal with a closed-door policy. Hence the announcement by Bismarck on April 24, 1884, of the protectorate over South-West Africa. Hence, also, the proposal that France and Germany agree on a commercial policy in the Congo looking toward the guarantee of the Open Door, a proposal resulting in the Conference called in November 1884, and the formulation of the General Act of Berlin in March 1885.[1] And by the end of 1885 Germany had possessions in Kamerun, Togo, East Africa, and South-West Africa aggregating 2,707,300 square kilometres, an area five times the size of the Fatherland.[2]

Why Germany adopted the Open Door as her colonial policy may be explained by the circumstance of the time.[3] The Conference of Berlin had just adopted free trade as the rule for Central Africa. Great Britain, the greatest colonial Power, pursued, more generally than to-day, an Open Door policy. And Germany, coming late into colonial enterprise, could not risk the retaliatory discriminations consequent to any other policy. Moreover, she stood to gain by encouraging the Open Door movement. And, finally, her recent protests against the Closed Door had put her on record as favouring the Open Door policy. We have now to examine Germany's Open Door regime.

II

Adopting the Open Door Policy

Germany acquired her African possessions in 1884 and 1885, and before the end of 1886 she had pledged the Open Door, by various treaties, in all this territory except South-West Africa. The reasons why Germany chose this policy have been noted. But the method chosen for giving effect to the

[1] See *Das Staatsarchiv*, Band xlv (1886), for the diplomatic correspondence leading up to this Conference.

[2] See Map of Africa (Appendix F). [3] *Colonial Tariff Policies*, p. 229.

policy deserves some attention. England for some years had been practising the Open Door policy in her colonies, but she did not generally bind herself by treaty to do so. Germany, on the other hand, not only was the earliest advocate of complete economic equality as the basis of the Conference of Berlin resulting in the Act of 1885 applied to the Conventional Basin of the Congo, in which parts of Kamerun and East Africa, then in process of formation, were included, but she also sought to extend the principle farther. Upon her own initiative she began negotiations with England relating to equality of treatment in the territories on the Gulf of Guinea under English and German protectorates. Replying to the German suggestion, Lord Granville, on May 16, 1885, stated that the British Government would give every assurance "that duties will be levied solely for the purpose of meeting the expenses necessary . . ."; that "the provisions of the second paragraph of the fifth article of the Act of Berlin, which accords protection to persons and property of foreigners, and to engage that there will be no differential treatment of foreigners as to settlement or access to markets . . . will be followed"; that Her Majesty's Government was "prepared to give every assurance that there shall be no differential treatment of foreigners or foreign goods. . . ."[1]

This was a general extension of the equality principle, reciprocal for England and Germany, but, according to Lord Granville's wording, not demanding reciprocity on the part of foreigners other than Germany, who would thereby be accorded exceptional Open Door privileges. For England even this was demanding nothing new in practice, since her West African colonies were uniformly open to all. But Germany, at the very beginning of her colonial career, was not yet disposed to offer the Open Door to any country without getting something in return.

Hence, when Count Münster replied on June 2, 1885, to Lord Granville's Note, he gave like assurances on the part of

[1] Cf. Bernhart, *Handbook of Commercial Treaties*, pp. 437, 438.

the German Government, except that for the term "foreigners" he used the term "British", thus limiting the agreement to a reciprocal bilateral treaty.[1] In like manner, on April 10, 1886, Count Herbert Bismarck and Sir Edward Malet, British Ambassador at Berlin, signed a declaration establishing the Open Door reciprocally in the Western Pacific. After defining the Western Pacific as that zone bounded by the 15th parallel north and the 30th parallel south, and lying between the 165th meridian west and the 130th meridian longitude east of Greenwich, within which the British and German spheres of influence were soon to be established, it was agreed that "the ships of both States shall in all respects reciprocally enjoy equal treatment as well as most-favoured-nation treatment, and merchandise of whatever origin imported by the subjects of either State, under whatever flag, shall not be liable to any other or higher duties than that imported by the subjects of other States or of any third Power".[2] Further acquisitions were to be covered by the agreement, and therefore the Caroline and Pelew Islands, purchased from Spain in 1899, were brought under the treaty.

Likewise the Samoan Group, in which the United States and Great Britain[3] shared claims, were, by special treaty of February 16, 1900, made Open Door colonies.[4] By Article III of the Treaty, "it is understood and agreed that each of the three Signatory Powers shall continue to enjoy in respect to their commerce and commercial vessels, in all the islands of the Samoan Group, privileges and conditions equal to those enjoyed by the sovereign Power in all ports which may be open to the commerce of either of them".

South-West Africa was thus the only German colony not

[1] Cf. Bernhart, *op. cit.*, p. 438. [2] *Ibid.*, p. 441.

[3] Great Britain exchanged her holdings in Samoa for the Savage and Tonga Islands in 1900.

[4] The United States practises the Open Door in no other colony. Porto Rico is assimilated while the Philippines and Guam are under a preferential tariff.

covered by an Open Door treaty. Nevertheless, this territory in practice was never made an exception to the rule. A uniform customs schedule prevailed here as in the other colonies. Nor did Germany practise a differential import duty at home.[1] Both as to imports and exports, the tariff schedules of all the German colonies contained no preferences.

In the Open Door treaties noted above, made in 1885 and 1886, the bilateral reciprocal principle was followed. However, it was the German policy to use the colonies as a means of bargaining for commercial advantages with other Powers, both in their metropolitan and colonial areas.[2] This practice was facilitated on the part of Germany by the large ordinance-making powers given to the Kaiser for the government of the *Ausland*.[3] Accordingly, through the operation of the most-favoured-nation clause, the benefits of these bilateral treaties were quite generally enjoyed by other countries with whom commercial treaties were negotiated in the two decades following 1885.

III

The Open Door in Practice

What objective proof exists to show that Germany lived up to her engagements? We have already alluded to the absence of any differential customs schedules. In addition, we may examine the trade statistics and ascertain, (1) if a disproportionate amount of the total trade of the colonies went to

[1] Differential import duties in the mother country are not generally regarded as constituting a violation of Open Door practice. They may alter the direction of trade from the colonies, but any such advantage can be off-set by other States lowering duties on the same articles to the same degree. See *Annals of the American Academy*, March 1924, p. 211.

[2] This bargaining policy applied only to the earlier years.

[3] Part I of the Law of 1886 reads: "The Kaiser exercises the powers of government in the protectorates in the name of the Empire." Quoted by Otto Köbner, *Einführing in die Kolonialpolitik*, p. 119. The Kaiser and the colonial governors had exclusive control over colonial tariffs.

Germany; (2) if any concealed preferences can be detected; (3) if non-German nationals trading in her colonies offered any evidence of differential treatment.

None of these tests can be offered as unfailing assurance of Open Door practice in these or any other territories which may be so examined. Any country that takes the responsibility and bears the expense of administering colonies, or mandates, will inevitably hope to secure the larger share of the trade of these territories, particularly the import trade. And if there are valuable resources to be exploited it is natural that the nationals of the governing State should be the first to be informed of them. If railroads or bridges are to be built, harbours constructed and public buildings erected, the more lucrative contracts are not likely to go to the nationals of other countries. Even if it can be shown that in assimilated colonies the lion's share of this trade goes to the mother country,[1] it does not follow that Open Door colonies should show a balance on the other side. The degree of economic disinterestedness sometimes demanded by extreme anti-imperialist proponents can hardly be expected in any scheme of orderly colonial development under national administration.

If as much as 60 or 70 per cent. of the trade of an Open Door colony goes to the mother country, it is no *prima facie* evidence of discrimination. In the early years of colonial development—and the whole of Germany's colonial experience from 1885 to 1914 did not get beyond this stage—materials for the construction of railroads and essential public works coming from the home country make up the largest items of commerce. If, however, nine-tenths of the trade continued to go indefinitely to the governing country, one might well doubt the existence of equality of treatment. But with all these comparisons one must take into account not only the location and type of colony, but also the relative sizes and populations of the colonial domain with the mother country. It is obvious

[1] Cf. H. F. Fraser, *Foreign Trade and World Politics*, pp. 94 ff.

that Great Britain could hardly participate in the larger share of the total trade of the rest of the Empire, which, counting the Dominions, constitutes 74 per cent. of the total trade of the world's colonies. The nationals of the mother country may hope to enjoy the larger share of the market facilities of their colonies; also they will hope to secure control of certain valuable colonial exports like oil and rubber, but a large field of commerce and trade will still remain in other hands.

In the case of Germany, her colonies were sparsely inhabited by natives in a low state of consuming capacity for manufactured goods, hence did not offer an appreciable market even for German surplus manufactures. Such capacity was still in the distant future. On the other hand, the German consuming market was quite adequate to care for most of the raw materials available from these colonies.[1] These factors, together with the supplies of Government materials going into railroads and public works, noted above, could account for a very large German share in the total colonial trade. Relevant trade figures follow.

In Table II (on facing page) is shown the total trade (import and export) of the German colonies from 1907 to 1913.

While the total foreign trade of the German colonies was insignificant in comparison with that of the colonies of some other countries, yet the volume and value of this trade was increasing very rapidly. The increase in total trade from 1907 to 1913 was 130 per cent. The increase in the imports during this period was 80·4 per cent., while the exports increased 223·8 per cent.

During all these years there was a deficit in the colonial budget, met by annual imperial subsidies. The total subsidies from 1884 to 1914 amounted to 867,441,118 marks (206,451,000 dollars), averaging for the years from 1910 to 1914 about 30,000,000 marks (7,500,000 dollars) per year. This expense to

[1] With the possible exception of the diamonds from South-West Africa.

TABLE II

TOTAL TRADE OF GERMAN COLONIES, 1907–13[1]
(In thousands of marks)

Colony.	1907.	1908.	1909.	1910.	1911.	1912.	1913.
East Africa	36,306	36,661	46,062	59,464	68,330	81,727	89,000
Kamerun	33,188	28,953	33,171	45,504	50,568	57,578	63,700
Togo	12,616	15,402	18,607	18,039	18,937	21,387	19,700
South-West Africa	34,012	40,974	56,784	79,063	73,875	71,534	113,700
Total African Colonies ..	116,122	121,990	155,624	202,043	211,710	232,226	286,100
Pacific Islands	13,786	16,317	21,148	27,640	28,497	31,333	—
Kiaochow	87,977	116,385	120,196	129,936	195,233	200,894	—
Total German Colonies ..	217,885	254,692	296,968	359,619	435,440	464,453	—

[1] Figures compiled from *Statistisches Jahrbuch*, 1910, 1915.

the German Government was sometimes used by German anti-colonialists as a sufficient reason to dispense with the colonies. Others used it as an argument for closing the door and monopolizing the colonial trade for the German taxpayers.

But colonial revenues were mounting rapidly year by year until as early as 1908 two of the smaller colonies, Togo and Samoa, were self-supporting. While the imperial subsidy amounted to 47·5 per cent. of the total ordinary colonial expenditures for 1909, colonial revenues were increasing so rapidly that only 28·3 per cent. was appropriated by the Imperial Government for 1914.

From the colonial trade figures we may deduce that the importance of the German colonies lay in the future.[1] The colonies were only in the early stages of commercial development. From the colonial fiscal reports we may reach the same conclusion. The German colonial financial policy looked toward self-support, but not at the price of necessary developmental programmes. In spite of budgetary deficits the German Government provided the necessary subsidies[2] for the construction of permanent improvements, such as railways, roads, harbours, public buildings, schools, and hospitals. The investments were regarded as an expenditure to ensure eventual productivity.

All these factors must be considered both in drawing conclusions as to the "present value" of the colonies before 1914 and in comparing the share of German participation in the trade of these colonies with that of other countries, like England and Holland, whose Open Door dependencies had

[1] How important the "colonies" are regarded in German policy is seen in the views expressed by Dr. Schacht, of the German Reichsbank, at the Reparations Conference in April 1929.

[2] Before 1908 these expenditures were included with the annual administrative expenses. After Dr. Dernburg took over the German Colonial Office in 1908, the expenses for permanent improvements were classified under "extraordinary" expenditures and defrayed by loans. See *Statistisches Jahrbuch*, 1915.

been in operation for a longer period. Such a comparison is made in the following table:

TABLE III

PERCENTAGE OF THE TOTAL EXTERNAL TRADE OF THREE COUNTRIES WITH THEIR COLONIAL POSSESSIONS, 1910–13

Mother Country.	1910.	1911.	1912.	1913.
England	24·1	23·4	24·8	26·2
Holland	33·0	36·1	34·2	35·4
Germany	0·4	0·42	0·54	0·5

From the foregoing table it will be seen that the proportion[1] of the colonial trade with the total external trade of Germany was comparatively so small and the ease of absorbing the total colonial trade so great that failure to do so can only be explained as a deliberate attempt to maintain the Open Door in order to obviate retaliation or to enhance Open Door practices by other States. In 1913 sisal hemp was the only commodity imported into Germany from her colonies which constituted more than 8 per cent. of the total value of the commodity so imported. Of rubber, palm kernels, palm-oil, beeswax, copper ore, copra, cocoa, and ground-nuts, Germany imported from other sources more than twelve times the amount which came to her from her own colonies. It is obvious, therefore, that monopoly of these exports from the colonies was easily possible, considering the market capacity of Germany.

But the participation of Germany in the total colonial trade is more significant than the participation of her colonies in the total German external trade. For the years from 1910 to 1912 inclusive, the percentage figures are given in the following table, along with similarly situated British, French, and Belgian

[1] W. H. Solf, *Colonial Policies*, p. 20: "It is not necessary that our colonies should supply our entire requirements. It suffices if they send us a portion to enable us to combat the hostile attempts to establish monopolies and to influence the price quotations in the market of the world."

colonies—all under Open Door agreements by virtue of the Berlin Act—for the same years:

TABLE IV

PER CENT. OF PARTICIPATION BY FOUR STATES IN THE TOTAL TRADE OF THEIR OPEN-DOOR COLONIES IN EQUATORIAL AFRICA, 1910–12.

Colonies.	1910.		1911.		1912.	
	Imports.	Exports.	Imports.	Exports.	Imports.	Exports.
[1] German East Africa..	50	61	52	59	51	57
German Kamerun ..	80	84	79	84	79	82
German Togo ..	54	62	39	64	44	53
[2] British Kenya ..	49	46	50	31	51	43
British Nigeria ..	50	59	54	50	65	52
British Gold Coast ..	50	61	47	43	68	65
[3] French Equatorial Africa	51	41	52	32	41	40
[4] Belgian Congo ..	73	88	65	87	67	90

Nothing in these comparative figures leads one to the conclusion that the Open Door was less scrupulously observed in the German colonies than in the colonies of France, England, and Belgium similarly located and conditioned by treaty obligations. More positively, considering the comparative capacity of Germany to absorb a larger proportion of her colonial trade, there is substantial evidence in these statistics to conclude that the Open Door was the rule both in principle and in practice. And when the materials for public works entering into the import figures are allowed for, the evidence appears still more convincing.

[1] *Statistisches Jahrbuch*, 1912, 1913.
[2] *Great Britain. Annual Statement of the Trade*, 1912, 1913.
[3] *Renseignements Généraux sur le Commerce des Colonies Françaises*, 1913.
[4] *Annuaire Statistique de la Belgique et du Congo*, 1911, 1912, 1913, 1914.

IV

No Evidence of Concealed Preferences

The uniform tariff schedule, both in the colonies and in Germany, made preferences of any kind difficult. Yet the possibility of the customary devices for concealment, such as abuse of the free list or peculiar nomenclature, should not be overlooked. Such preferences sometimes exist in schedules which present the most innocent appearance. The inducement for such practices on the part of Germany was increased at this time by the trend toward the preferential system in the colonies of other countries. Yet no one has accused Germany of manipulating the tariff in her own favour.[1]

An examination of the dutiable articles in the African colonies indicates that those chosen were selected for either protective or fiscal reasons rather than for reasons of discrimination. South-West Africa, where the list of dutiable goods was smallest, illustrates this case.[2] Duties were imposed on liquors, tobacco, arms, sugar, and matches, articles generally selected for revenue purposes. Other dutiable articles consisted of butter, fresh meat, sheep, and live cattle, chosen obviously to protect the local cattle industry.

Articles on the free list seemed well chosen for promoting the economic development of the colonies in the shortest time. That a larger volume of such goods came from Germany indicates nothing more than that all Open Door colonies, like colonies in general, carry on the largest portion of their trade with the mother country.

The most serious complaints made against German Open Door practice fall into a different category. It was alleged that the harbour and port facilities, limited at best, were so admin-

[1] Cf. Sir H. H. Johnston, in *Edinburgh Review*, October 1914, p. 311. Also *Colonial Tariff Policies*, p. 245.

[2] South-West Africa was not bound by any Open Door treaty. Hence this colony might have been more likely to practise discrimination.

istered as to give a practical monopoly to German shipping. Since most of the trade of this territory was sea-borne, effective control could be gained by the steamship line so favoured. Also it was alleged that certain discriminatory taxes were imposed on non-German commercial travellers.[1] But it must be remembered that the native population of the German colonies was very sparse and not yet accustomed to the purchase of European goods. Resident Germans constituted the chief purchasers, and it is not surprising that they should have favoured German sellers and German goods.

Summary

In concluding the case as to Germany's colonial policy and Open Door practice, we may, therefore, note the following: Germany was the one Great Power which did not win her colonial empire by conquest. She engaged upon colonial enterprise tardily, somewhat reluctantly, and under the pressure of a growing emigration problem. The tariff barriers of other colonies finally convinced Bismarck of the necessity of colonial expansion.

The Open Door policy was adopted by Germany at a time when she was protesting the closed doors of other territories, and when she was taking the initiative in promoting the Conference of Berlin for equality of treatment in the Congo. Germany took a new departure in Open Door methods by negotiating with England bilateral reciprocal and unlimited Open Door treaties for their respective territories in Middle Africa and in the Pacific. Using these treaties for bargaining purposes, she negotiated a series of other reciprocal most-favoured-nation treaties, thus generalizing her Open Door treatment.

There is no evidence from trade statistics, tariff schedules,

[1] See *British Board of Trade Journal*, April 3, 1919, pp. 436–437.

and informed authorities which leads to the conclusion that the Open Door was not practised. Whether from fear of tariff retaliation or in the hope that other States would adopt the Open Door,[1] the economic equality aspect of German colonial administration from 1885 to 1914 stands as a record of which the German nation may well be proud.

B

THE OPEN DOOR WITHIN THE BRITISH EMPIRE. 1880–1919

I

The Reappearance of Protection and Preference, 1880–1914

The free-trade policy adopted by Great Britain in the middle of the nineteenth century, which resulted in the abolition of nearly all her customs duties, including the preferential duties on colonial products, continued without compromise until nearly the end of the century. So deeply rooted was this policy that when certain colonies and Dominions sought to protect their infant industries, offering at the same time a preferential tariff in favour of British trade, Britain was not at all appreciative of the favour.

From 1849 until 1880 Great Britain's commercial treaties generally included the whole Empire, pledging reciprocal most-favoured-nation treatment and even national treatment throughout the whole extent of their possessions and territories. One such important commercial agreement was made with the German *Zollverein* in 1865, binding the colonies to

[1] W. H. Solf, in *Colonial Policies*, a collection of addresses made from 1914 to 1918, says: "Once we are in possession of a sufficiently large, industrially well-developed colonial empire, we shall have a means of enforcing the Open Door in all the colonial markets of the world."

accord the same treatment to German as to British goods, thus obliging them to maintain the Open Door, even without consulting them. Under pressure from Canada the Zollverein Treaty was denounced in 1897. This date marks a change in Empire policy which was made possible in 1880 by the granting of tariff autonomy to the Dominions, and extended a decade later by similar autonomy granted to certain Crown Colonies. Since 1900 England has made no agreement limiting her action in her own colonies. A pledge to maintain the Open Door in Nigeria and the Gold Coast expired in 1928. Few Open Door agreements of any kind have been made in this century.

The move from free trade toward protection, and its correlative effect in colonial tariff policy—from the Open Door to dominion and imperial preferences—has been most marked since the Canadian Preference Act of 1897. However, the origins of this change have an anterior history of which only the salient points can here be noted.

First, there was a general revival of protectionism in Germany, France, and America. France withdrew from the Cobden Treaty in 1872 and proceeded to raise her general tariff schedules. Failing to reach a new commercial agreement with Great Britain, she passed a law in 1882 granting most-favoured-nation treatment to Great Britain, but only on the higher conventional basis resulting from her new treaties with other countries. Similarly, Austria, Spain, and Portugal refused to negotiate tariff treaties with Great Britain, since, on the free-trade basis, Britain had nothing to offer them in return for concessions.[1]

Naturally this trend of affairs was bitterly disappointing to those English free-traders who were hopeful that their policy would surely be followed by other countries. Moreover, the industrial depression in England from 1874 to 1880 was explained by protectionists as the result of Britain's disadvantage in bargaining with her commercial rivals. Could she continue

[1] Cf. *Colonial Tariff Policies*, p. 636.

to offer free trade while more and more tariff barriers were being erected against her? Protectionists argued that "reciprocity" should be the minimum demand of future commercial agreements with countries outside the Empire.

Then, within the Empire, Continental protectionism was followed by intimations from Canada, Cape Colony, and other parts that a policy of imperial preference would be welcomed. The founding of the Imperial Federation League in 1884 gave impetus to this movement. The Colonial Conference of 1887, held in London, though purely consultative in character, led to a discussion concerning "a uniform duty to be imposed on all imports entering the Empire from foreign countries".[1] The argument was advanced that the colonies should be treated as integral parts of the Empire and not as foreign territories.

Canada was the first to give a preferential tariff to Great Britain. This decision was based on the conclusion that Canada's future lay either with the United States or with the Empire, and that commercial union with the United States would mean eventual absorption, whereas, a bond with England, 3,000 miles away, would afford both the requisite degree of defence and of independence.[2] This was the issue on which the Conservative Party won the election in 1891. The Canadian Pacific Railway, completed in 1885, turning trade east and west instead of north and south, was a determining factor in Canada's commercial and political future.

It was now that Canada and other parts of the Empire strongly urged the denunciation by England of the Commercial Treaty of 1865 with the German *Zollverein*, which prevented them from offering preferences without including German as well as British goods. Britain finally acceded to this request in 1897, and in the same year Canada instituted her preferential tariff.[3] A year later Rhodesia gave a differential favour to England.

[1] *Proceedings of the Colonial Conference of 1887*, p. 466.

[2] C. M. Waters, *The Economic Development of England and the Colonies*, p. 102.

[3] A similar treaty with Belgium was also denounced.

In 1903 the British Government assented to the introduction of preferential tariffs in the Crown Colonies of South Africa. Also differential export duties were permitted in the Federated Malay States.

From 1903 to 1907 all the Dominions adopted some degree of preference either in favour of the United Kingdom or, in the case of New Zealand, in favour of the whole Empire. But until 1914 the preferential system obtained only in the Empire outside the United Kingdom, although it had finally won the Government's support in the colonies.

In the United Kingdom, while the Liberal Party was in power from 1905 to the beginning of the World War, imperial conferences made small headway with the imperial preference policy. "Tariff reform" made its gains chiefly under the leadership of Conservatives like Joseph Chamberlain, who, as early as 1895, in taking over the Colonial Office, urged a self-sufficing Empire defended by an imperial *Zollverein*. To them imperial preference was a step toward closer political union, an idea specifically advanced in the Imperial Conference of 1902, but rejected by the colonies themselves.[1] But free-traders continued to argue against protection on the ground that Britain could not afford to raise food prices in the doubtful hope that protected industries would provide more work, citing the prevailing unemployment in protectionist Germany and America. Substantially the same arguments continue to be repeated at the present day.

II

1914–1919

The World War proved to be an impetus to colonial preference in Great Britain. National sentiment was used to per-

[1] Waters, *op. cit.*, p. 101 ff.

suade the people that the Dominions and colonies, who had so generously aided in the war, were entitled to preferential treatment. The Coalition Cabinet of 1915 brought into the Government Unionist influence which led to a more favourable attitude toward industrial protection and colonial preference. As a war measure, the House of Commons passed, on January 10, 1916, the motion of Mr. W. A. S. Hewins, that the Government consult with the Governments of the Dominions "in order to bring the whole economic strength of the Empire into co-operation with our Allies in a policy directed against the enemy".[1] The London Chamber of Commerce, in 1916, adopted a resolution calling for the adoption of a tariff graduated on an ascending scale and classified as follows: British Empire Countries, Allies, Neutrals, Enemy Countries.[2]

The second Coalition Cabinet under Mr. Lloyd George appointed a "committee on Commercial and Industrial Policy after the war", which was charged to consider: (1) what industries are essential to the future safety of the nation, and what steps should be taken to maintain or establish them; (2) what steps should be taken to recover home and foreign trade lost during the war and to secure new markets; (3) to what extent and by what means the resources of the Empire should and can be developed; (4) to what extent and by what means the sources of supply within the Empire can be prevented from falling under foreign control.

This committee made an interim report in March 1917, recommending that "H.M. Government should now declare their adherence to the principle that preference should be accorded to the products and manufactures of the British Overseas Dominions in respect of any customs duties now or hereafter to be imposed on imports into the United Kingdom". Also it was urged that a wider range of customs duties be adopted in order to give practical effect to preferences and to

[1] *Parliamentary Debates*, vol. lxxvii, cols. 1299 ff.
[2] Cf. J. A. Hobson, *The New Protectionism*, p. 153.

furnish a basis for the negotiations of commercial treaties with the Allies.[1]

Shortly thereafter the Imperial War Conference of 1917 endorsed the principle of preference in the following terms:

"The time has arrived when all possible encouragement should be given to the development of imperial resources and especially to making the Empire independent of other countries in respect of food supplies, raw materials, and essential industries. With these objects in view this Conference expresses itself in favour of the principle that each part of the Empire, having due regard to the interests of our Allies, shall give specially favourable treatment and facilities to the produce and manufactures of other parts of the Empire." [2]

The War Cabinet had previously approved this resolution, but both Mr. Lloyd George and Mr. Bonar Law were careful to state publicly that this principle of preference does not involve "the taxation of food".[2]

In its final report, made on February 2, 1918, the Committee on Commercial and Industrial Policy considered the adoption of a comprehensive tariff scheme providing for free importation of essential food-stuffs, for moderate duties on all other commodities, and for preferential reduction or remission of these duties on imports from the British colonies. The Committee was not unanimous, however, on these recommendations. As a whole, it agreed that protective duties should be applied only to the particular industries requesting and needing protection, considering each case in relation to British industry in general.

The report also admitted that any preference to Dominion produce would affect raw materials and basic food-stuffs, their chief exports. This being unacceptable to British consumers, the report concluded with the recommendation for considering "other forms of imperial preference".

Resolutions in favour of preference to the colonies passed by public bodies were met by similar pronouncements from

[1] For full report see *Parliamentary Papers*, Cd. 8482 (1917).
[2] Cd. 8566 (1917). [3] Cf. J. M. Robertson, *The New Tariffism*, p. 31.

members of the Cabinet. On July 25, 1918, the Colonial Secretary, Mr. Long, was reported as fully approving the scheme.[1] Mr. Bonar Law, on July 29, 1918, stated in the House of Commons that the Government had decided to adopt imperial preference after the war.[2] This was bringing the British Government into line with the Governments of the Dominions on this principle and would not be in conflict with the League of Nations principle, he averred. In speaking to a deputation of manufacturers next day, he suggested that in adopting the principle of preference the colonies would co-operate in "reserving the raw materials of the Empire for the Empire".[3]

In order to be free to put such a preference scheme into operation, the British Government, in September 1918, withdrew from the Brussels Sugar Convention.[4]

The Coalition Manifesto, issued ten days after the Armistice, by Mr. Lloyd George and Mr. Bonar Law, in view of the approaching election, stated the programme for imperial preference as follows:

"This country will need all the food, all the raw materials, and all the credit which it can obtain, and fresh taxes ought not to be imposed on food or upon the raw materials of our industry. At the same time a preference will be given to our colonies upon existing duties and upon any duties which for our own purpose may be subsequently imposed.

"One of the lessons . . . taught us by the war is the danger to the nation of being dependent upon other countries for vital supplies on which the life of the nation may depend."

The victory of the Coalition forces in the General Election of December 14, 1918, presaged the early enactment of the preference policy. Opposition was expressed by the British Labour Congress of September 1918, which declared that the war had not altered the soundness of the principles of free trade

[1] See *The Times* for July 25, 1918.
[2] *Parliamentary Debates*, vol. cix, col. 40.
[3] *Manchester Guardian*, August 2, 1918.
[4] See *Board of Trade Journal* for September 5, 1918, p. 305.

and urged the Government to consider the danger of protective duties.

On April 30, 1919, Mr. Austen Chamberlain, Chancellor of the Exchequer, in introducing proposals for preferential rebates to the colonies, which he described as a "small beginning", explained the four main considerations of the preference scheme as follows:[1]

> "In the first place the preference should be substantial in amount. Next the rates should as far as possible be few and simple. Thirdly, where there is an existing excise duty corresponding to the customs duty which is affected, the excise duty must be altered. . . . Lastly, . . . I have to remember the interests of our Allies."

In the course of a lengthy debate in Parliament, Mr. Chamberlain pointed out on May 20, 1919, that the preference proposals embodied in the budget then being considered did not cover the whole of the Government's preference policy; that preference could not be confined to customs duties but "was to inform our whole policy". In the matter of Government purchases and capital investments the Empire should be given preference over foreign countries.[2]

Mr. Winston Churchill, speaking before the Dundee Liberal Association on May 15, 1919, was at pains to show that preference and free-trade principles were reconcilable.[3] It had often been said that the logical end of imperial preference was "free trade within the Empire", and this conception of free trade was not always distinguished from the Cobden-Bright conception of an earlier day.

The Peace Conference in Paris was at this time engaged in formulating the principles of the Mandates System. Were the British mandates to be within the scope of the new imperial preference scheme or would their status prevent this? This question was raised numerous times in later years within the Mandates Commission itself, but on May 14, 1919, the question

[1] *Parliamentary Debates*, vol. cxv, cols. 124 ff. [2] *Ibid.*, vol. cxvi, col. 120.
[3] See *Manchester Guardian*, May 16, 1919.

was put to Mr. Chamberlain in the House of Commons by an opponent of imperial preference.

Mr. Chamberlain replied that mandates held within the Empire will not take the status of colonies, but in certain cases (referring to the "C" mandates) they will be administered as integral portions of the mandatory's territory and "will consequently share in its advantages".[1] From this reply it might have been inferred that other classes of mandates would not come within the preference scheme.

The point was further discussed by Mr. Lloyd George on July 3, 1919, in speaking of the Peace Treaty before Parliament. Referring to the mandated territories in general, he said: "Equal opportunities for trade and commerce—we have allowed that in all our colonies without distinction. So that you find that the conditions of the mandate described here are the conditions which we ourselves have always applied in respect to British colonies throughout the world."[2]

On July 9, 1919, Mr. Chamberlain proposed to amend the wording of the Bill so that its preference provisions would apply to the British Empire, defined to include any "territory in respect of which a mandate of the League of Nations is exercised by the Government or any part of His Majesty's Dominions". Explaining that mandated territories are not technically "protectorates", yet, although their exact character was not at that moment defined, he saw no reason why preference should not be extended to these territories.

Labour and Liberal opposition members criticized the amendment as being in conflict with the principles of the League of Nations and of Article 22 of the Covenant. Moreover, it would cause dissension, they argued, for a German merchant in South-West Africa would gain a preference not enjoyed by residents in a French colony. However, the amendment was carried by 195 votes to 58.

But opposition to the bill continued on the point that pre-

[1] *Parliamentary Debates*, vol. cxv, col. 1599. [2] *Ibid.*, vol. cxvii, col. 766.

ference to colonial imports would cause retaliation by foreign countries. Mr. Chamberlain seemed to resent this argument most of all, and in his reply stated his position as follows:

"It would not occur to any foreign Government to think that the internal arrangements of another nation or empire was their affair at all if so many members of the House of Commons and publicists outside did not studiously apply themselves to teaching foreign nations that it was. . . . What we choose to do within the British Empire is the concern of the British Empire. It gives no right for any foreign nation to take offence. No foreign nation invites or would tolerate our interference in their internal customs arrangements, and I see no reason, but for the suggestions coming from the honourable gentlemen, why any foreign nation should take offence at our doing what other foreign nations have done for years without complaint from us or anybody else. If that be the issue, if a foreign nation chooses to raise that issue, and to say, when one portion of the British Empire treats another portion of the British Empire as kinsmen, as parts of one whole, as partners in one great commonwealth, that that is an offence to the foreign nation, then the whole British Empire would be ready to meet that and to stand shoulder to shoulder to combat it."[1]

Again, on July 9, 1919, when it was suggested that colonial preference was out of harmony with the world movement of the time, and especially in conflict with the third of President Wilson's Fourteen Points, Mr. Chamberlain cited Cuba and Porto Rico as an example of preference by the United States. Continuing, he said:[2]

"I am quite certain that President Wilson's Fourteen Points do not suggest that a country has no right or would not continue to have the right to differentiate between its own citizens and the citizens of another nation. What he may have desired, and what I think he did desire, was to lessen the amount of discrimination, or to abolish the discrimination, with which one country treated foreign countries as compared with one another. That is a totally different thing."[3]

The finance bill providing for preferences was passed to go

[1] *Parliamentary Debates*, vol. cxv, col. 500. [2] *Ibid.*, vol. cxvii, col. 1880.

[3] Mr. G. Murray, Coalitionist Unionist, used the same argument, citing not only the United States, but France and Italy as well, for examples of the preferential policy towards their colonies. *Ibid.*, col. 1875.

into effect on September 1, 1919, giving preferential reductions ranging from one-third to one-sixth on all goods from the colonies coming under the restricted tariff schedule of the United Kingdom; the colonies were at once relieved from general war-time prohibitions on certain imports. Later, anti-dumping legislation was passed as a protection in case of possible retaliation through this device.

Thus Great Britain, the historic leader of free trade and hitherto the most outstanding champion of the Open Door as a colonial tariff policy, followed the precedent of the Dominions in adopting the preferential system and applied it to all imports originating within the Empire.

Summary

From 1880 to 1897 the movement in the United Kingdom for protection was augmented by the protectionist trend in Continental European countries and America. It was urged that Great Britain could not bargain in commercial agreements on the basis of free trade. At the same time, from within the Empire, the Dominions and certain colonies turned toward protection for their infant industries, but were willing to grant preferences to Great Britain both for sentimental and defence reasons.

From 1897 to 1914 the Dominions all adopted preferences in some form, New Zealand extending it to the whole Empire. In the United Kingdom, Joseph Chamberlain and other Conservative leaders urged forms of imperial confederation varying from political union to a customs union, and looking toward free trade "within the Empire". The Liberal Governments, however, checked all efforts in this direction on the economic side, while the colonies opposed it on the political side.

From 1914 to 1919 the conditions of the war brought Coalition Governments to power, some of whose members

were favourable to a preference policy. During this period nine Colonies, including India and the four West African Crown colonies, adopted differential export duties on important commodities.[1] At the same time certain differential war duties and prohibitions adopted in Great Britain gave the basis for a schedule from which a post-war colonial preference system could be built up.

The sentimental argument of doing something for the colonies in return for their part in the war was not without effect. Chambers of Commerce in London and Manchester passed resolutions favouring preference, as did also many public bodies. The post-war election gave power to the party advocating preference, and a measure was duly introduced as part of the finance bill in April 1919, opposed by Labour and Liberal Members of Parliament, but passed and put into force, September 1, 1919.

While this tendency was occurring in the greatest colonial Empire in the world, the Paris Peace Conference was attempting to define an Open Door policy for the territories taken from Germany and Turkey. How they succeeded is the subject of the next chapter.

[1] Most of these duties were abolished in 1924.

CHAPTER IV

THE OPEN DOOR AT THE PEACE CONFERENCE

I

"A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the Government whose title is to be determined."

—WILSON'S *Fifth Point*

WITH the foregoing text as a starting-point, the Paris Conference finally devised Article 22 of the Covenant of the League of Nations as the constitution for the Mandates System.

The actual stages through which the proposed drafts passed in the weeks between December 16, 1918, and January 24, 1919, may be noted in the following relevant extracts from the documents submitted. The Smuts plan of December 16 referred to the disposition of territories other than the German colonies as follows:[1]

"That the Mandatory State shall in each case be bound to maintain the policy of the Open Door, or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the League for the purposes of internal police."

President Wilson, who was familiar with the Smuts plan, took up the idea therein presented. But whereas the Smuts plan was not intended to apply to the German African colonies—for reasons later to become obvious—President Wilson, in submitting his Second Draft on January 10, 1919, included the following note:[2]

[1] Cf. J. C. Smuts, *The League of Nations: a Practical Suggestion*. This pamphlet, which appeared in December 1918, was the first elaborated proposal dealing with mandatory government.

[2] Cf. David Hunter Miller, *The Drafting of the Covenant*, vol. ii, pp. 87, 89.

"In respect of the peoples and territories which formerly belonged to Austria-Hungary and to Turkey, *and in respect of the colonies formerly under the dominion of the German Empire* (italics mine), the League of Nations shall be regarded as the residuary trustee with sovereign right of ultimate disposal or of continued administration. . . .

"The Mandatory State or agency shall in all cases be bound and required to maintain the policy of the Open Door and equal opportunity for all the signatories to this covenant, in respect of the use and development of the economic resources of such people and territory."

By this proposal the mandate principle was to extend to the German colonies, making impossible the annexation of those territories. And, in addition, it was proposed to extend the policy of the Open Door over all this area, a point which was finally compromised by rejecting the Open Door for the C mandates, but accepting the mandatory principle for all. Wilson's Third Draft, submitted January 20, 1919, contained the following clause:[1]

". . . there shall in no case be any annexation of any of these territories by any State either within the League or outside of it."

When the Paris drafts are studied in connection with the pre-war trend away from the Open Door, as noted in the light of the Allied understandings on annexations reached during the war, together with the fact of existing military occupation of the territories in question by the Dominions, England and France, the reason why the Open Door was compromised at the Peace Conference will become apparent.

In the first place not one of the leading Powers at the Conference was in a position to advocate the Open Door as a matter of principle. On the contrary, France was definitely committed to the practice of assimilation. Her only Open Door colonies were such by treaty, and even in this case she was using the expulsion of Germany from Open Door privileges in Morocco under the Algeciras Act of 1906 as an argument against the other signatories, now her Allies.[2] Moreover,

[1] C.f. D. H. Miller, *The Drafting of the Covenant*, vol. ii, p. 103.

[2] See *Procès-Verbaux de la Commission du Maroc, Conférence de la Paix*, Paris, 1919. Also Culbertson, *International Economic Policies*, p. 282.

France definitely wanted to annex part of the Cameroons and Togo.[1]

Italy was in no stronger position at Paris. Her own colonial tariff practice was based on preferences. Furthermore, she was accused of violating the Berlin Act of 1885 in Somalia by charging an import duty higher than that fixed by agreement with Germany and Great Britain in 1890 for their possessions in the eastern zone of the Congo Basin. And in 1905 she charged more than the 10 per cent. import duty agreed to under the Brussels Act of 1890.[2] Also, by Article XIII of the Treaty of London of April 26, 1915, France and Britain had promised Italy the right of extending her possessions in Africa "in the event of an extension of the French and British colonial possessions in Africa at the expense of Germany".[3] Accordingly, at the Peace Conference, Signor Orlando observed, in discussing the future of the German colonies, that "Italy had only one simple and perfectly just desire, namely, that a proper proportion between the Allies should be maintained in respect of the occupation of those territories . . . that Italy obtain its share of mandates or territories to be militarily occupied".[4] And in consideration of the British and French mandates, Italy was later permitted to annex additional African territory to Libya and to Jubaland.

The British Dominions, which were represented in Paris in full force, wanted the Open Door applied only to those territories where their immediate interests were not at stake. Themselves strong advocates of imperial preferences, as we have seen, their programme at the Peace Conference was to be satisfied with nothing short of annexation. Canada alone was the exception. South Africa, New Zealand, and Australia already were occupying German South-West Africa, Samoa, and New

[1] D. H. Miller, *The Drafting of the Covenant*, vol. i, p. 103.
[2] *U.S. Tariff Commission, Colonial Tariff Policies*, pp. 401, 402.
[3] *The Times*, April 30, 1920.
[4] Miller, *op. cit.*, vol. ii, p. 201. Also Beer, *African Questions at the Peace Conference*, p. 451.

Guinea respectively, and they fully expected to retain complete control both for economic and strategic reasons. Even General Smuts, of South Africa, whose ingenuity and idealism contributed so largely to the creation of the League of Nations, the Mandates System,[1] and even of the Open Door feature itself, had no intention of applying mandatory Open Door conditions to the German African colonies.[2] Mr. Massey, speaking for New Zealand at the session of the Council of Ten, January 30, 1919, put the case for direct annexation of Germany's colonies in terms which caused President Wilson to interrupt and ask if he (Mr. Wilson) was to understand that New Zealand and Australia had presented an ultimatum to the Conference. The result of the whole controversy was the paragraph of Article 22, which envisaged certain territories that "can best be administered under the laws of the Mandatory as integral portions of its territory . . .". These territories were subsequently listed as "C" mandates, in which the Open Door does not obtain. According to Temperley, "the whole subject (of mandates) seemed in danger of splitting on the rocks of South African nationalism. The situation was saved by a carefully worded compromise . . .".[3] To say the least, the Dominions cannot be accredited with promoting the Open Door policy at the Peace Conference.

What was the position of Great Britain, the State with the largest Open Door colonial empire in the world? The new political status of the Dominions, for the first time asserting themselves with vigour and independence in foreign policy, created a situation difficult in the extreme for the British delegates. A less nimble diplomat than Lloyd George might

[1] The origin of the mandates idea cannot be considered here. It has been fully discussed by various writers. See especially Pitman B. Potter, "Origin of the System of Mandates under the League of Nations," *Political Science Review*, vol. xvi, pp. 579, 580.

[2] See his *The League of Nations: a Practical Suggestion*, presented to the Peace Conference on December 16, 1918, and published by Miller, *op. cit.*, vol. ii, pp. 23 ff.

[3] Temperley, *History of the Peace Conference of Paris*, vol. vi, p. 437.

easily have split both the Empire and the Conference. As it was, he played a middle position between the annexationist groups on the one hand and the "idealists" of England and America on the other.

The Dominions had abandoned Open Door policy. But in a number of the formerly Open Door Crown Colonies, differential export duties were in force, with powerful political groups in England urging an extension of closed-door policy. And while the Peace Conference was in session the House of Commons passed the imperial preference bill adopting this principle for Great Britain. Moreover, England was a party to the secret treaty of London of April 26, 1915, by which Italy's entry into the war was secured in return for certain territorial considerations, and of the Sykes-Picot Agreement of May 1916, whereby an understanding was reached with France in regard to territorial settlements in the Near East.[1] Thus England was under a heavy mortgage of previous commitments which all but paralysed whatever non-annexationist and Open Door sentiment prevailed within the Empire.

The United States was happily free from all such secret agreements. Nor was she suspected of having any territorial ambitions in Africa or the Near East. President Wilson had not only opposed all annexations as resulting from the war, but he secured world-wide acclaim for his magnificent statement of war aims and the terms of settlement. "Impartial adjustment of all colonial claims",[2] and the extension of Open Door conditions to all territories placed under mandate, including the German colonies, were the minimum of his demands. All this would have been exceedingly forceful but for one thing—the United States has herself never practised the Open Door as a colonial tariff and trade policy. Porto Rico is assimilated. The

[1] By another agreement made in May 1916, Great Britain had promised Japan certain German islands in the Pacific in return for military co-operation with the Allies. See A. Millot, *Les Mandats Internationaux*, pp. 15 ff., for a discussion of Allied territorial commitments.

[2] Wilson's Fifth Point.

Philippines, situated in that part of the world where the United States insists on the Open Door,[1] are all but assimilated as regards commercial opportunity. Immediately upon the expiration of the ten-year term, following 1898, during which the Open Door was guaranteed by the Treaty of Paris, the United States discontinued this policy and adopted preferential treatment in the islands.[2] Before 1913 a rebate of the export duty on Manilla hemp exported from the Philippines was given, a practice far from strengthening a liberal trade policy. And by the extension to the Philippines of the coastwise shipping laws of the United States, made possible by the Merchant Marine Act of June 5, 1920,[3] an exclusive shipping policy was added to the growing American monopoly of Philippine trade, which has its historic parallels in the navigation laws of the eighteenth century and the closed-door policies of Spain and Portugal. Moreover, the Virgin Islands and Guam are on the preferential basis. Only Samoa and the Canal Zone have the Open Door, and this by treaty obligations.

It is obvious, therefore, that the United States was in no strong position to recommend the Open Door policy at the Peace Conference. Japan, too, practises assimilation in her limited colonial territories, and could not urge the principle. Ironically enough, Germany was the only Great Power at the Conference in a position consistently to advocate an Open Door policy. As a result of this anomalous situation, some of the Allies, like the United States, found that certain of the enemy's colonies which formerly were open to trade without

[1] The Open Door in China cannot be discussed in this study. For an excellent study of this subject, see M. J. Bau, *The Open Door Policy in Relation to China*, 1923.

[2] The statement of the American Commissioners in Paris in 1898 seemed to predict an Open Door regime in the Philippines. To quote: "And it being the policy of the United States to maintain in the Philippines an Open Door to the world's commerce, the American Commissioners are prepared to insert in the treaty now in contemplation a stipulation to the effect that for a term of years . . ." etc.

[3] Discretionary power is given to the President to apply the law when local, national, and world shipping conditions permit.

discrimination were now closed to them by their own Allies. Ten years after the war this continues to be the subject of a diplomatic controversy, the end of which is not yet in view.[1]

II

But if there was some timidity among the Allied and Associated Powers as to the principle which should guide them in distributing the territories in question, there was speedy agreement that Germany should be dispossessed of them. The point was disposed of in a few words in the Council of Ten on January 24, 1919, as follows:[2]

"All he (Mr. Lloyd George) would like to say on behalf of the British Empire as a whole was that he would be very much opposed to the return to Germany of any of these colonies.

. . . . . .

"President Wilson said that he thought all were agreed to oppose the restoration of the German colonies.

"M. Orlando, on behalf of Italy, and Baron Makino, on behalf of Japan, agreed.

"(There was no dissentient, and this principle was adopted.)"

This resulted in Article 119 of the Treaty of Versailles:

"Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions."[3]

The return of the colonies to Germany was opposed chiefly on two counts, both of which were grossly exaggerated by the war-time hysteria. In the first place, Germany was accused of brutal, inhuman, and "Prussianizing" methods in her treatment of the natives, hence unfit to govern colonies. That Prussian sternness and severity often obtained has been clearly proved. But that unproved exceptional German atroci-

[1] See Chapter VI, "The United States, the Open Door, and the Mandates System", for the statement of this international controversy.

[2] D. H. Miller, *op. cit.*, vol. i, p. 105.

[3] The United States, in making a separate treaty with Germany, inserted the same article, a point of great significance in the later Allied negotiations on mandate terms in these territories. *Infra*, p. 131.

ties in Belgium were more characteristic of her native policy than the clearly proved atrocities in the Congo Free State were typical of Belgian policy may well be doubted by the impartial and scientific historian. It is now clearly seen that this argument at the Peace Conference rested very considerably on propaganda.[1]

The second reason for dispossession was one of strategy. Germany, solely responsible for the war, and naturally imperialistic and militaristic, must not only be completely disarmed but also deprived of all naval bases in other parts of the world. Revisionist historians like Gooch, Fay, Renouvin, and others have corrected the world's perspective by producing from the archives proofs of divided responsibility on war guilt. Moreover, the failure of the Allies after ten years materially to reduce their own military and naval budgets or to fulfil their disarmament commitments under the Versailles Treaty raises profound questions as to the actual seat of imperial and militarist design.[2] Nevertheless, it was inevitable, be the reasons valid or not, that Germany should lose her colonies, and it was equally inevitable that, as a result, fewer Open Door territories should be available for the world's commerce than before.

Assured that the colonies were not to be restored, what was to prevent annexation? This was indeed the hope of the Dominions, France, and Italy.[3] From the point of view of economic equality, annexation is not always inconsistent with the Open Door, but considering the commercial policies of these particular claimants there would have been ample cause for doubt.

Annexation, or its full equivalent, was the basis of the Treaty

[1] The charge that Germany pursued in Africa a policy of native extermination was made by several writers during the latter years of the war, notably Evans Lewin, *The German Regime in Africa*, and Camille Fidel, *La Paix Coloniale Française*.

[2] See P. J. N. Baker, *Disarmament*, p. 24. Also Rennie Smith, *Disarmament*.

[3] Miller, *op. cit.*, i, p. 103.

of London and of the Sykes-Picot Agreement already noted.[1] But direct annexation was made difficult by another type of war-time commitment. As the war went on it became more and more necessary to find war aims which would enlist the active sympathy and support of even the most tender and idealistic minds. More particularly was this true in the United States, where a mixed population, containing a large element of Germans, far removed from the perennial European quarrels, could not be induced to fight on either side, except for the most provocative or else the most idealistic of reasons. Ample provocation was furnished by British interference with American neutral shipping. But this was offset by German submarine interference in the early months, and was therefore not a sufficient cause in itself.

President Wilson's idealistic war aims are now well known.[2] Among the corollaries were such statements as "no annexations, no indemnities", "the day of conquest and territorial aggrandizement has gone by", "territorial settlements must be made in the interest and for the benefit of the populations concerned", etc. Mr. Lloyd George also began to speak in similar terms, and although there was some inconsistency here with the secret-treaty commitments, the immediate need for a high moral idealism was so urgent that any contradictions might well be left for skilful diplomacy after the victory. However, these stated war aims in America and England made outright annexation impossible.

The only other alternative was some form of international control either directly by the League of Nations about to be formed or by national administration with international supervision, the form finally chosen and known as the Mandates System. Direct international government of the territories in question was opposed on practical grounds, while a *con-*

[1] These Allied secret agreements were not made known to President Wilson until he reached Paris. See R. S. Baker, *Woodrow Wilson and the World Settlement.*

[2] Baker, *op. cit.*, vol. i, pp. 12 ff.

dominium was rejected as having failed in the cases where tried, notably Samoa and the New Hebrides.[1] There remained, then, the implementation of the mandatory principle.

III

The excerpts quoted at the beginning of this chapter delineate the signal stages in the birth of a momentous experiment in colonial administration. Although born in an atmosphere of intrigue and rapacious greed and abandoned in the early years by an anarchistic non-co-operating parent, this international child has shown such remarkable traits of vitality in its first ten years that impartial observers predict for it a future of tremendous consequence—or a sudden and early demise through arrested development.[2]

If the mandatory idea can be traced back to the General Act of Algeciras, or if the term itself was used with a more limited meaning in earlier international diplomatic correspondence,[3] the conception of mandatory government as developed at the Peace Conference has very immediate origins. During the war years a group of persons interested in international politics began to deal with certain problems which would arise out of the war and its settlement. These formed what is known as the Round Table group and issued a magazine with that title containing articles, usually anonymous, from reliable authors in every part of the world, though predominantly from the British Empire. In this Round Table group were such

[1] G. L. Beer, *African Questions at the Peace Conference*, pp. 421–3.

[2] Moon, *op. cit.*, p. 512: "Yet it is true that the 'old imperialism' and the new 'trusteeship' cannot live together in so small a world as ours. The idea of trusteeship, the public criticism of administration in the mandates . . . must inevitably, though insensibly, influence the administration of colonies legally outside the mandate sphere. . . ."

[3] See Pitman B. Potter, "Origin of the System of Mandates under the League of Nations", *The Political Science Review*, vol. xvi, p. 519. Also Luther H. Evans, "Some Legal and Historical Antecedents of the Mandatory System," 1924, *Proceedings of Fifth Annual Convention of the South-Western Political Science Association, Houston, Texas.*

persons as Philip Kerr, J. A. Hobson, Jan C. Smuts, George Louis Beer,[1] H. N. Brailsford, and others who developed from the Algeciras plan a scheme of international colonial administration which would give more adequate protection to the natives and at the same time give more effective guarantees to the application of the Open Door principle.

These ideas converged into a document brought forward by General Jan C. Smuts in December 1918 entitled *The League of Nations: a Practical Suggestion*,[2] not as original in its League idea as in its plan for dealing with enemy territories not yet capable of self-government.[3] President Wilson studied

[1] The late George Louis Beer was chief of the colonial division of the American delegation to negotiate peace, and alternate member of the Commission on Mandates. His papers and studies in this connection were posthumously published in 1923 under the title *African Questions at the Peace Conference*. Mr. Beer was mentioned for chief of the Mandates Section of the League, but did not accept when the United States failed to ratify the treaty.

[2] Miller, *op. cit.*, vol. ii, Document 5, pp. 23 ff.

[3] In Germany, during the war, a draft covenant for a League of Nations was also devised by the *Deutsche Gesellschaft für Volkerrecht*, but, under the circumstances, it received little or no attention at the Peace Conference. The article dealing with colonies (Art. 32) stated:

> "With respect to the colonies and possessions, including protectorates, of the States of the League, the following principles are to be observed:
>
> [Here are inserted several articles relating to protection of natives, etc.]
>
> "5. In all colonies the trade of all nations is to enjoy absolute freedom. . . . Any differential treatment of vessels and cargoes is disallowed. . . . Exceptions, especially monopolies of all kinds, require the sanction of the League.
>
> "6. No difference shall be made between citizens and foreigners as to the protection of their property, the exercise of their profession . . . and the giving away of public contracts.
>
> "7. An international colonial office is to be established for the control and execution of the above stipulations.
>
> "8. In every colony agents of the League (Consuls of the League, will have to watch the proper observance of the above rules. . . ."

See *Monographien Völkerbund, herausgegeben von der Deutschen Liga für Volkerbund*, Heft i, ss. 158 ff., Berlin, 1919.

The British Labour Party had also made similar pronouncements anticipating a mandates system. See *Proceedings of the British Labour Party Conference of 1917*. Also J. Stoyanovsky, *La Théorie Générale des Mandats Internationaux*, pp. 7–10.

this plan after his arrival in Paris, and the extent to which he was influenced by it may be seen by comparing his Second Draft for the League Covenant with the Smuts proposal and noting the almost identical wording. But whereas the Smuts plan did not intend that the German African and Pacific colonies should be brought under the Mandates System, Wilson made no such exception and insisted that all colonies should be so administered. Moreover, he strongly urged the Open Door for all these territories, a suggestion which met vigorous opposition by the Dominion representatives, who stood for unrestricted annexation.[1]

By juggling the order of the items on the agenda for the meeting of the Council of Ten on January 30, 1919, the American delegation was taken rather unawares by a compromise resolution unexpectedly brought in by Mr. Lloyd George, whereby the mandatory principle for all the colonies was agreed to in principle, but the territories to be mandated were grouped into three classes, the third class referring to the territories contiguous to the Dominions, such as South-West Africa ("C" mandates), in which the Open Door presumably would not apply.[2]

Australia and New Zealand opposed the Open Door in the mandates they were about to receive in order to exclude Orientals and continue their "White Australian" policy. South Africa opposed the Open Door in order to continue her preferential-tariff policy. These reasons, however, were not expressly stated to the Council.[3]

Mr. Hughes, for Australia and the other Dominions, announced that the Prime Minister of Great Britain had accurately set out the position of the Dominions but held out

[1] Baker, *op. cit.*, vol. i, pp. 250, 257. *Supra*, p. 92.

[2] Miller, *op. cit.*, vol. ii, p. 194.

[3] The Lloyd George Compromise Resolution as adopted January 30, 1919, and the final Mandates Article (22) of the Covenant are appended at the end of this chapter for comparative study. *Infra*, p. 101. See also Temperley, *op. cit.*, vol. vi, p. 515.

the possibility that his Government would not accept a settlement short of direct control.

President Wilson now took the floor and first referred to a question of privilege. Noting that the Paris Press was daily giving out information which went beyond the official communiqués, that his own views were being flagrantly misrepresented, that a Press campaign was being launched to defeat the non-annexationist policy, he warned the Council that he might be compelled fully to publish his own views. Then, accepting in principle Mr. Lloyd George's compromise resolution, he tried to postpone detailed agreement until after the League of Nations and Mandates machinery was more fully constituted.[1]

Hereupon Mr. Lloyd George expressed despair at the thought of postponing "problem (*a*) until agreement had been reached regarding questions (*b*), (*c*), (*d*), (*e*), and (*f*)". The idea of formulating the constitution of the world in eight days was raised and ridiculed. The delegates for Italy and Japan favoured the compromise of Mr. Lloyd George. But the question was adjourned until the afternoon, when further annexationist speeches were made by Mr. Massey and Mr. Hughes, whereupon President Wilson interposed to ask if he was to understand that New Zealand and Australia had presented an ultimatum to the Conference.[2] At this point General Botha, citing some personal experiences as a Boer, now a British subject, pleaded for concession and compromise.

With the case apparently won for the Dominions, M. Clemenceau, hitherto silent, chose this point in the negotiations to demand the right of France to raise troops from all colonial territories under French control. The Government drafts had all denied this right, but the French regarded it as "absolutely necessary for the future security of the French territory" (although no official distribution of mandatory territory was as yet made to France or any other Power).

Mr. Lloyd George said that "so long as M. Clemenceau

[1] Miller, *op. cit.*, vol. ii, pp. 195 ff.

[2] *Ibid.*, vol. ii, p. 280.

did not train big nigger armies for the purposes of aggression", using them only for "defence of territory", nothing in the clause under review would prevent that. Mr. Wilson said that Mr. Lloyd George's interpretation was "consistent with the phraseology".[1] M. Clemenceau's amendment to Mr. Lloyd George's resolution was accepted, and the claims of France were satisfied.

This recognition of France's claim in a territory not yet granted led M. Orlando to inquire whether passing this amendment implied the granting of provisional mandates or if the mandates would be distributed by a further resolution of the Conference. (Italy, of course, was interested in any question of territorial distribution.)

Mr. Lloyd George replied that the question of distribution was not yet being dealt with. M. Clemenceau, apparently less evasive about the matter, suggested that M. Orlando's proposal be discussed, that as France, England, and the Dominions "had had their share, Italy wanted to have her share".[2]

Mr. Lloyd George, at this point, urged the necessity for an early disposition of the matter, in view of the tremendous expense to the Empire of maintaining armies of occupation in the widely scattered territories, "especially as they had not the slightest intention of becoming Mandatories of the considerable territories they now occupied, such as Syria and parts of Armenia. . . . He did not think that they (the British) had the slightest intention of being Mandatories even for the oilwells of Baku, but somebody had to be there to protect the Armenians and to keep the tribes and sects in Lebanon from cutting each other's throats and attacking the French or Turks . . .".[3] Then, after urging President Wilson to consider a mandate for Armenia, which Mr. Wilson said the United States would be disinclined to do, it was suggested to refer certain questions of occupation and substitution to the military experts.

[1] Miller, *op. cit.*, vol. ii, p. 219. [2] *Ibid.*, vol. ii, p. 221.

[3] This was understood to mean that Britain would take the mandate for Mesopotamia.

Mr. Lloyd George thought it wise to know the attitude of the military authorities in case the British agreed to withdraw from Syria. "Or from Mesopotamia", added Mr. Wilson. "Or from Kurdistan", said Mr. Lloyd George.[1]

By this time it was evident how the official distribution of territories would be made, and there was nothing to prevent the adoption of Mr. Lloyd George's original compromise resolution, which was done forthwith. But after the vote was taken, Belgium discovered that no mention was made of her claims to territory, whereupon she made representations to the Council of Ten, which were subsequently realized in her mandate over a portion of East Africa—Ruanda-Urundi.

A reading of the full minutes of this session will hardly convince one that the idea of sacred trust was more dominant than that of annexation and division of the spoils of war. Neither aspect of the "dual mandate"—protection of natives, or equality of economic opportunity—seemed to dominate the discussion growing out of the compromise resolution. The immediate stakes were taken to be manœuvring for favourable positions in territorial distribution and it would be folly to assume that the mandatory principle and its implications were as yet regarded seriously. War-time agreements were still the dominant factor in the minds of the chief Allies. France, England, and the Dominions secured from the discussions of January 30, 1919, just what they had hoped to secure before the mandate idea had come to the fore.

So skilfully did the Lloyd George compromise resolution close the door in the third class of territories—it was done by inference rather than explicit statement—that Baron Makino, of Japan, and Mr. Hymans, of Belgium, did not seem fully to grasp the situation. Later, when the draft articles of the Covenant were considered one by one by the Commission on the League of Nations, Mr. Hymans raised the point.[2]

[1] This interesting bit of repartee shows how closely sentiment and oil were related in the minds of the plenipotentiaries.

[2] Mr. Hymans, of course, was not present at the Council of Ten.

Thus, in the minutes of the tenth meeting of the Commission, February 13, 1919, one reads:[1]

"Lord Robert Cecil read Article 19. (The Lloyd George draft.) Mr. Hymans proposed that the equality of treatment for all the States Members of the League should be established as well in South-West Africa and the islands of the Pacific as in the other German colonies of Central Africa. He did not see why some of those colonies should be placed under special rules.

"General Smuts requested that the Commission should not discuss this matter, as the very point emphasized by Mr. Hymans had been the object of long discussions at the Council of Ten before being so decided.

"Mr. Hymans answered that he was willing not to insist, but reserved his right to discuss the question further at one of the meetings of the plenary conference.

"Mr. Bourgeois made the same reservation."

It appears, however, that they never raised the question again in public session.

Japan was interested all through the Peace Conference in getting a meaning recognized for "equality of nations" which would prevent any form of race discrimination. Baron Makino attempted to insert an additional clause to this effect in the Preamble, but unanimity being impossible, the motion was not adopted.[2]

After the Peace Conference, when the form of the "C" mandates was before the League Council on December 17, 1920, Viscount Ishii said:[3]

"From the fundamental spirit of the League of Nations, and as to the question of interpretation of the Covenant, His Imperial Majesty's Government have a firm conviction in the justice of the claim they have hitherto made for the inclusion of a clause concerning the assurance of equal opportunities for trade and commerce in the 'C' mandates. But from the spirit of conciliation and co-operation, and their reluctance to see the question unsettled any longer, they have decided to agree to the issue of the mandate in its present form. . . ." [4]

[1] Miller, *op. cit.*, vol. ii, p. 323.

[2] *Ibid.*, vol. i, pp. 461–465.

[3] *Official Journal*, January–February, 1921, p. 95.

[4] Japan generally includes in her annual report to the P.M.C. an account of her trade policy, and willingly answers questions in regard to economic equality, which she practises in the sense of no discriminations among nations excepting herself.

At the Peace Conference the Wilsonian position was by no means lost, even if a compromise was made at the time on the Open Door in the "C" mandates. Direct annexation of any of the territories was defeated, notwithstanding a claim later made in South Africa that the "C" mandate amounts to practical annexation.[1] All the German African and Pacific colonies, as well as the Turkish territories, were subjected to mandatory government. And as for the compromise of the Open Door in South-West Africa and the islands of the Pacific, forced on President Wilson, this settlement is not yet regarded by the United States as final. The Associated Power has not recognized the validity of the "C" mandates (except for the Island of Yap), and "it should be clearly understood that without the formal approval of the United States this settlement remains tentative".[2]

Whether the former German colonies can be permanently held as mandates without allowing Germany a monetary consideration on her reparations payments depends upon a future interpretation of the exact meaning of the mandatory status.

IV

Mandates Clauses of Wilson's Third Draft, January 20, 1919

"In respect of the peoples and territories which formerly belonged to Austria-Hungary and to Turkey, and in respect of the colonies formerly under the dominion of the German Empire, the League of Nations shall be regarded as the residuary trustee with the right of oversight or administration in accordance with certain fundamental principles hereinafter set forth; and this reversion and control shall exclude all rights or privileges of annexation on the part of any Power.

"These principles are: that there shall in no case be any annexation of any of these territories by any State either within the League or outside of it; and that in the future government of these peoples and territories the rule of self-determination, or the consent of the governed

[1] See letter of Jan C. Smuts of July 4, 1922, addressed to the Mandates Commission, Minutes, iii, Annex 6, p. 91.

[2] *Report of United States Tariff Commission on Colonial Tariff Policies*, 1922, p. 266. See Chapter VI, which deals with this subject.

to their form of government, shall be fairly and reasonably applied; and all policies of administration or economic development be based primarily upon the well-considered interests of the people themselves.

"Any authority, control, or administration which may be necessary, in respect of these peoples or territories other than their self-determined and self-organized autonomy, shall be the exclusive function of and shall be vested in the League of Nations and exercised or undertaken by or on behalf of it.

"It shall be lawful for the League of Nations to delegate its authority, control, or administration of any such people or territory to some single State or organized agency which it may designate and appoint as its agent or Mandatory; but whenever or wherever possible or feasible the agent or Mandatory so appointed shall be nominated or approved by the autonomous people or territory.

"The degree of authority, control, or administration to be exercised by the Mandatory State or agency shall in each case be explicitly defined by the Executive Council in a special Act or Charter which shall reserve to the League complete power of supervision, and which shall also reserve to the people of any such territory or governmental unit the right to appeal to the League for the redress or correction of any breach of the mandate by the Mandatory State or agency or for the substitution of some State or agency as Mandatory.

"The Mandatory State or agency shall in all cases be bound and required to maintain the policy of the Open Door, or equal opportunity for all the signatories to this Covenant, in respect of the use and development of the economic resources of such people or territory.

"The Mandatory State or agency shall in no case form or maintain any military or naval force, native or other, in excess of definite standards laid down by the League itself for the purposes of internal police.

"Any expense the Mandatory State or agency may be put to in the exercise of its functions under the Mandate, so far as they cannot be borne by the resources of the people or territory under its charge upon a fair basis of assessment and charge, shall be borne by the several Signatory Powers, their several contributions being assessed and determined by the Executive Council in proportion to their several budgets, unless the Mandatory State or agency is willing itself to bear the excess costs; and in all cases the expenditures of the Mandatory Power or agency in the exercise of the mandate shall be subject to the audit and authorization of the League.

"The object of all such tutelary oversight and administration on the part of the League of Nations shall be to build up in as short a time as possible out of the people or territory under its guardianship a political unit which can take charge of its own affairs, determine its own connections, and choose its own policies. The League may at any time

release such people or territory from tutelage and consent to its being set up as an independent unit. It shall also be the right and privilege of any people or territory to petition the League to take such action, and upon such petition being made it shall be the duty of the League to take the petition under full and friendly consideration with a view to determining the best interests of the people or territory in question in view of all the circumstances of their situation and development."

The Lloyd George Compromise Resolution on Mandates as Offered to the Council of Ten, January 30, 1919

"1. Having regard to the record of the German administration in the colonies formerly part of the German Empire, and to the menace which the possession by Germany of submarine bases in many parts of the world would necessarily constitute to the freedom and security of all nations, the Allied and Associated Powers are agreed that in no circumstances should any of the colonies be restored to Germany.

"2. For similar reasons, and more particularly because of the historic misgovernment by the Turks of subject-peoples and the terrible massacres of Armenians and others in recent years, the Allied and Associated Powers are agreed that Armenia, Syria, Mesopotamia and Kurdistan, Palestine and Arabia, must be completely severed from the Turkish Empire. This is without prejudice to the settlement of other parts of the Turkish Empire.

"3. The Allied and Associated Powers are agreed that advantage should be taken of the opportunity afforded by the necessity of disposing of these colonies and territories formerly belonging to Germany and Turkey which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, to apply to these territories the principle that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in the constitution of the League of Nations.

"4. After careful study they are satisfied that the best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reasons of their resources, their experience, or their geographical position, can best undertake this responsibility, and that this tutelage should be exercised by them as Mandatories on behalf of the League of Nations.

"5. The Allied and Associated Powers are of opinion that the character of the mandate must differ according to the stage of development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

"6. They consider that certain communities formerly belonging

to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory Power.

"7. They further consider that other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory, subject to conditions which will guarantee the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic (and the prevention of the military training of the natives for other than police purposes, and the establishment of fortifications or military and naval bases), and will also secure equal opportunities for the trade and commerce of other members of the League of Nations.

"8. Finally they consider that there are territories, such as South-West Africa and certain of the Islands in the South Pacific, which, owing to the sparseness of their population, or their geographical contiguity to the Mandatory State, and other circumstances, can be best administered under the laws of the Mandatory State as integral portions thereof, subject to the safeguards above-mentioned in the interests of the indigenous population.

"In every case of mandate, the Mandatory State shall render to the League of Nations an annual report in reference to the territory committed to its charge."

Final Text of Article 22 of the Covenant.

Note that the first two paragraphs of the Lloyd George Resolution are omitted and two final paragraphs are added. Otherwise the two documents are substantially the same.

"1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in this Covenant.

"2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience, or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

"3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.

("A" MANDATES)

"4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

("B" MANDATES)

"5. Other peoples, especially those of Central Africa, are at such stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

("C" MANDATES)

"6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population.

"7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

"8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by members of the League, be explicitly defined in each case by the Council.

"9. A permanent Commission shall be constituted to receive and examine annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

CHAPTER V

IMPLEMENTATION OF ARTICLE 22[1]: THE MACHINERY AND FUNCTIONING OF THE MANDATES SYSTEM

The Territories Mandated

The territories formerly belonging to Turkey and to Germany which were created into mandates and divided amongst the several Mandatory Powers are given in the table on page 107, together with area and population statistics and significant dates as to allocation and entrance into force of the mandates.

Selecting the Mandatories

Although the distribution of the territories was well understood from the Sykes-Picot agreement of 1916 and the fact of existing occupation by allied forces as well as from discussions in the earlier sessions of the Peace Conference as brought out in the meeting of the Council of Ten on January 30, 1919, the official allocation of the "B" and "C" mandates was not made until May 1919 by the Allied Supreme Council in Paris.[2] The "A" mandates were allocated at the San Remo Conference of the Supreme Council in April 1920.

How certain of these areas were further subdivided to satisfy all claimants cannot be given in detail here. But the fact that the Cameroons and Togo were cut into narrow strips

[1] Assembly Document No. 161 (1920) contains in a collection of fourteen annexes the various instruments putting the Mandate System into effect. An excellent juridical discussion on Article 22 is given in Schücking and Wehberg, *Die Satzung des Völkerbundes*, pp. 680–711.

[2] For allocation of the mandates see Assembly Document No. 161 (1920), Annex 2. It should be remembered that Article 22 was drafted and the territories were allocated before the League itself came into existence. Although a work of victorious Powers, the adherence to the Covenant by other members of the League constituted an endorsement of the terms already agreed on.

Mandate.	Mandatory.	Class.	Area.	Population.	Date of Allocation of Mandate.	Date of Approval by the Council.	Date of Entry into Force.
Iraq	Great Britain ..	A	116,000	3,000,000	April 1920	Sept. 1924	Sept. 1924
Syria and Lebanon	France	A	57,916	2,100,000	April 1920	July 1922	Sept. 1923
Palestine and Trans-Jordan ..	Great Britain ..	A	—	802,000	April 1920	July 1922	Sept. 1923
Tanganyika ..	Great Britain ..	B	365,000	4,125,000	May 1919	July 1922	July 1922
Ruanda-Urundi ..	Belgium ..	B	21,235	3,000,000	May 1919	July 1922	July 1922
British Togo ..	Great Britain ..	B	12,600	185,000	May 1919	July 1922	July 1922
British Cameroons	Great Britain ..	B	31,000	550,000	May 1919	July 1922	July 1922
French Togo ..	France	B	22,000	747,000	May 1919	July 1922	July 1922
French Cameroons	France	B	166,489	2,771,000	May 1919	July 1922	July 1922
S.W. Africa ..	Union of South Africa ..	C	322,393	228,000	May 1919	Dec. 1920	Dec. 1920
New Guinea ..	Australia ..	C	91,300	400,000	May 1919	Dec. 1920	Dec. 1920
Samoa	New Zealand ..	C	1,133	38,000	May 1919	Dec. 1920	Dec. 1920
South Sea Islands	Japan	C	833	42,000	May 1919	Dec. 1920	Dec. 1920
Nauru	British Empire Great Britain .. Australia .. New Zealand ..	C	8	2,000	May 1919	Dec. 1920	Dec. 1920

by Britain and France; that Belgium sought and gained a part of East Africa; that Syria and Mesopotamia were eagerly claimed while Armenia went begging; that the small island of Nauru secured three trustees, shows that the so-called "burden" was not regarded as too great a hardship by most of the underwriters of the sacred trust.

But if the clause in Article 22—"and who are willing to accept it"—was not generally invoked in 1919, another clause —"the wishes of these communities must be a principal consideration in the selection of the Mandatory"—was likewise ignored. Though meant to apply only in the "A" mandates, where alone it was possible to consult the natives, no such reference was, in point of fact, ever made.[1]

Drafting the Mandates

By paragraph 8 of Article 22—"the degree of authoritative control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by members of the League, be explicitly defined in each case by the Council".

During the summer of 1919 a commission was appointed by the Allies which met in London and drafted terms for the "B" and "C" mandates. France, however, made a reservation to these terms, as regards the recruiting of native troops, and Japan also found the terms unacceptable on grounds of economic and race discriminations.[2]

The League Council then decided that the principal Powers concerned should be requested to draft the terms of the mandates.[3] This procedure was followed, and on December 17,

[1] Cf. Rappard, *International Relations as Viewed from Geneva*, p. 31: "As a matter of fact, no native community was effectively consulted, and no principle was applied in the distribution of the mandates save those of force of possession and geographic propinquity."

[2] *Official Journal*, September 1920, p. 336.

[3] See Assembly Document No. 161 (1920), Annex 5. Letter addressed by the President of the Council of the League of Nations to the Four Principal Allied Powers on the subject of mandates.

1920, the Council approved the "C" mandates.[1] After a long delay, caused by objections raised by the United States over the equality clauses,[2] and by a difference between France and Italy over Syria, the "B" mandates were finally approved by the Council on July 17, 1922,[3] and the "A" mandates for Syria and Palestine on September 29, 1923.[4] No mandate was ever issued for Iraq, but a treaty between the Mandatory and Iraq containing the required features was approved by the Council on September 27, 1924.[5] All these draft mandates were carefully examined and approved as to form and substance by the Legal and Mandates Sections of the League before being finally adopted by the Council.[6]

The Mandates

The only explicit reference to the Open Door in Article 22 is in paragraph 5, referring to the territories of Central Africa, which requires the Mandatory to "secure equal opportunities for the trade and commerce of other members of the League".[7] Even had this reference been omitted the Open Door would still have been in force in this area under the Berlin Act covering the Conventional Basin of the Congo.

But in the "A" as well as the "B" mandates, as finally drafted, there are detailed articles granting economic equality to all the States Members of the League. The scope and wording of these articles varies sufficiently to note them separately.

[1] *Official Journal*, December 17, 1920.
[2] *Infra*, p. 131 ff.
[3] *Monthly Summary of the League of Nations*, vol. ii, No. 7, pp. 153–155.
[4] *Official Journal*, November 1923, p. 1355.
[5] See League of Nations Document C. 216, M. 77, 1926.
[6] See Appendix X for typical "A" and "B" mandates.
[7] Temperley, vol. ii, p. 239: "This was a most important clause, and obviated the necessity of a detailed definition on the 'Open Door', since the Court was constituted the ultimate judge of what was complete economic, commercial, and industrial equality."

Article XI of the treaty between Britain and Iraq reads:[1]

"There shall be no discrimination in Iraq against the nationals of any State, member of the League of Nations, or of any State to which His Britannic Majesty has agreed by treaty that the same rights should be ensured as it would enjoy if it were a member of the said League (including companies incorporated under the laws of such State), as compared with British nationals or those of any foreign State in matters concerning taxation, commerce, or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Nor shall there be any discrimination in Iraq against goods originating in or destined for any of the said States. There shall be freedom of transit under equitable conditions across Iraq territory."

The special clause in the third line of the article refers particularly to the United States, which, though not a member of the League, insisted on equality of treatment in a protracted and heated exchange of notes between Secretary Colby and Lord Curzon in 1920 and 1921.[2]

The Open Door article in the mandate for Syria (Art. XI) is more detailed and includes additional specific equality guarantees, particularly with reference to concessions. It reads:

"The Mandatory shall see that there is no discrimination in Syria or the Lebanon against the nationals, including societies and associations, of any State Member of the League of Nations as compared with its own nationals, including societies and associations, or with the nationals of any other Foreign State in matters concerning taxation or commerce, the exercise of professions or industries, or navigation, or in the treatment of ships or aircraft. Similarly, there shall be no discrimination in Syria or the Lebanon against goods originating in or destined for any of the said States; there shall be freedom of transit, under equitable conditions, across the said territory.

"Subject to the above, the Mandatory may impose or cause to be imposed by the local government such taxes and customs duties as it may consider necessary. The Mandatory, or the local government acting under its advice, may also conclude on the grounds of contiguity any special customs arrangements with an adjoining country.

[1] Cd. 1757 (1922). The mandate for Iraq is in the form of a treaty negotiated in 1924, which fully satisfied the Council that all the mandate obligations under the Covenant were being observed.

[2] See Chapter VI for discussion of United States relations to mandates.

"Concessions for the development of these natural resources shall be granted without distinction of nationality between the nationals of all States Members of the League of Nations, but on condition that they do not infringe upon the authority of the local government. Concessions in the nature of a general monopoly shall not be granted. This clause shall in no way limit the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory of Syria and the Lebanon, and with a view to assuring to the territory the fiscal resources which would appear best adapted to the local needs, or, in certain cases, with a view to developing the natural resources either directly by the State or through an organization under its control, provided this does not involve either directly or indirectly the creation of the monopoly of the natural resources in favour of the Mandatory or its nationals, nor involve any preferential treatment which would be incompatible with the economic, commercial, and industrial equality guaranteed above." [1]

An examination of this text will indicate the devious wording of the qualified clauses which form the basis of the equality guarantees that guide the observations of the Permanent Mandates Commission with respect to the enforcement of the Open Door.

The Palestine Mandate provides in Article 18 almost identical guarantees of economic equality as are covered in the first three paragraphs of the preceding article for Syria. But it should be noted that nothing is said in the Palestine Mandate concerning concessions.[2] Other articles peculiar to this mandate pertain to the establishment of a home for the Jewish nation.

Turning to the six "B" mandates, all the articles pertaining to economic equality are uniform. The exact wording of Article VII for Tanganyika reads as follows:[3]

"The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect to entry into and residence in the territory, the protection afforded to their person and property, mov-

[1] From Mandate for Syria. See Appendix.

[2] Equality of treatment in regard to concessions is explicitly guaranteed in all the "A" and "B" mandates, except Palestine and Iraq. However, the Mandates Commission has examined the questions of concessions in Iraq. See Minutes, xii, xiv.

[3] League Document C. 449 (1) *a*, M. 345 (*a*) 1922, vi. See Appendix.

able and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

"Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial, and industrial equality; except that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.[1]

"Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local government.

"Concessions having the character of a general monopoly shall not be granted. This provision does not effect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or in certain cases to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial, and industrial equality hereinbefore guaranteed." [2]

"The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law."

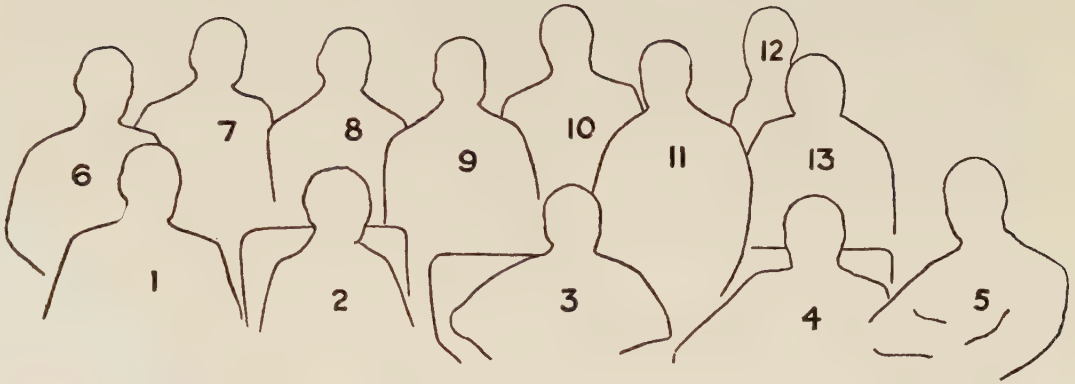
It has already been made clear that no economic equality guarantees are contained in the five "C" mandates. The foregoing uniform articles of the "B" mandates and the slightly dissimilar Open Door articles of the "A" mandates furnish the basis upon which the League supervises the administration of economic equality under the Mandates System.[3]

[1] What in fact constitutes "essential public works" has led to considerable discussion by the Permanent Mandates Commission. See Minutes, Session xii, p. 66.

[1] The same article occurs in the other "B" mandates. For Ruanda-Urundi, Art. 7; French Togo, Art. 6; French Cameroons, Art. 6; British Togo, Art. 6; British Cameroons; Art. 6.

[2] Japan has willingly supplied information and answered questions in regard to economic equality conditions in her "C" mandates.

Photo: F. H. Jullien] PERMANENT MANDATES COMMISSION *[Geneva*



Front Row: 1. Lord Lugard. 2. Mlle. Dannevig. 3. The Marquis Theodoli, Chairman. 4. M. van Rees, Vice-Chairman. 5. M. Orts.

Standing: 6. M. Sakenobe. 7. Dr. Kastl. 8. Mr. Weaver. 9. M. Merlin. 10. M. Rappard. 11. Count de Penha Garcia. 12. M. Catastini, Director Mandates Section. 13. M. Palacios.

The Permanent Mandates Commission

By paragraphs 7 and 9 of Article 22 of the Covenant, provision is made for the international supervision of the mandates.

Paragraph 7: "In every case of mandate the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge."

Paragraph 9 : "A permanent commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

A constitution for the Permanent Mandates Commission in accord with the preceding paragraphs of Article 22 was approved by the Council on December 1, 1920. With minor amendments adopted by the Council on January 10, 1922, and September 8, 1927, the present constitution stands as follows:[1]

"(*a*) The Permanent Mandates Commission provided for in paragraph 9 of Article 22 of the Covenant shall consist of ten Members. The majority of the Commission shall be nationals of non-Mandatory Powers.

"All the members of the Commission shall be appointed by the Council and selected for their personal merits and competence. They shall not hold office which puts them in a position of direct dependence on their Governments while members of the Commission.

"The International Labour Organization shall have the privilege of appointing to the Permanent Commission an expert chosen by itself. This expert shall have the right of attending in an advisory capacity all meetings of the Permanent Commission at which questions relating to labour are discussed.

"(*b*) The Mandatory Powers should send their annual report provided for in paragraph 7 of Article 22 of the Covenant to the Commission through duly authorized representatives, who would be prepared to offer any supplementary explanations or supplementary information which the Commission may request.

"(*c*) The Commission shall examine each individual report in the presence of the duly authorized representative of the Mandatory Power from which it comes. This representative shall participate with absolute freedom in the discussion of this report.

"(*d*) After this discussion has ended, and the representative of the

[1] See Assembly Document No. 161 (1920), Annex 14, for original, and Document C.P.M. 386 (1) for revised form.

Mandatory Power has withdrawn, the Commission shall decide on the wording of the observations which are to be submitted to the Council of the League.

"(*e*) The observations made by the Commission upon each report shall be communicated to the duly authorized representative of the Mandatory Power from which the report comes. This representative shall be entitled to accompany it with any comments which he desires to make.

"(*f*) The Commission shall forward the reports of Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorized representative of the Power which issued the report, if the representative so desires.

"(*g*) When the Council publishes the reports of the Mandatory Powers and the observations of the Permanent Commission, it shall also publish the observations of the duly authorized representatives of those Mandatory Powers which have expressed such a desire.

"(*h*) The Commission, acting in concert with all the duly authorized representatives of the Mandatory Powers, shall hold a Plenary Meeting to consider all the reports as a whole and any general conclusions to be drawn from them. The Commission may also utilize such a meeting of the representatives of the Mandatory Powers to lay before them any other matters connected with mandates which in their opinion should be submitted by the Council to the Mandatory Powers and to the other States Members of the League. This Plenary Meeting shall take place either before or after the presentation of the annual reports as the Commission may think fit.

"(*i*) The Commission shall regulate its own procedure, subject to the approval of the Council.

"(*j*) The Commission shall sit at Geneva. It may summon technical experts to act in an advisory capacity for all questions relating to the application of the system of mandates.

"(*k*) The Members of the Commission shall receive an allowance of 70 gold francs per day during their meetings. Their travelling expenses shall be paid. Expenses of the Commission shall be borne by the League of Nations."

For the purpose of this study it is important to note the chief aspects of the constitution, first, as regards composition and personnel of the Permanent Commission, which "advises the Council on all matters relating to the observance of the mandates", and, secondly, as to the procedure followed in the extremely delicate task of examining and, in effect, controlling

the policy and practice of sovereign States in their capacity as Mandatories.[1]

Personnel

Obviously the whole success of international control of mandatory government depends upon the degree of impartial, non-national approach exercised by the members of the Commission itself. While this is true of the League as a whole, it is nowhere more true than in the Mandates System. The ten members of the Commission are therefore chosen by the Council, not as nationals, but as experts. In addition, the majority of these members must come from non-Mandatory States. And again, members may not hold a position of direct dependence on their Governments while serving on the Commission.

An examination of the personnel of the Commission indicates at once the expert rather than the political or national character of its members. The Chairman, the Marquis Theodoli, was formerly in the Italian Colonial Office; the Vice-Chairman, M. Van Rees, was a former Vice-President of the Governing Council of the Dutch East Indies; M. Freire d'Andrade was a former Minister of Foreign Affairs of Portugal; Mlle Valentine Dannevig, of Norway, is particularly experienced in questions of education and child welfare; Lord Lugard was for many years Governor of Nigeria and long a noted authority on colonial administration; M. Merlin was formerly Governor-General of French Indo-China; M. Pierre Orts was a former Under-Secretary-General of the Belgian Foreign Office; M. Palacios was formerly Spanish Under-Secretary of Foreign Affairs; M. Sakenobe was previously Japanese Minister to Chile; Dr. Kastl was former Treasurer of German South-West Africa;

[1] Cf. D. F. W. Van Rees, *Les Mandats Internationaux* (1927), vol. i, pp. 56 ff. This work, in two volumes, by the Vice-President of the Permanent Mandates Commission is the most authoritative complete study which has yet appeared of the international control of mandatory administration, particularly from the juridical point of view.

M. Rappard, Professor of Economic History and Public Finance at the University of Geneva, who, in 1924, upon his resignation as Director of the Mandates Section of the Secretariat, was appointed as an extraordinary member of the Commission; Mr. H. A. Grimshaw [1] sits on the Commission as expert in labour questions representing the International Labour Organization.

The complete political independence of the Commission was well stated by several of its members in the course of its extraordinary session in February 1926, in Rome, when the disturbances in Syria were on its agenda. The Mandatory for Syria, in its handling of petitions, in its failure to supply the Commission with adequate documentation, and in its local administration, was felt to be remiss. Could the members of the Commission speak in so delicate a situation without being liable to the charge of political bias? Outlining the position of the Commission, M. Rappard observed that:[2]

"the Council in framing the constitution of the Commission had endeavoured to indicate almost ostentatiously its desire that the members of the Commission should not be regarded as in any way representative of the Ministers for Foreign Affairs or of the Colonies, but merely as experts speaking in their personal capacity. . . . If the members of the Commission were to any extent the mouthpieces of their respective Governments their duty of co-operation would limit their duty of supervision to such a degree as to make it quite illusory. The members of the Commission presented their own personal opinions only, and were not in any way the representatives of their Governments."

This absence of national bias is a striking fact as one examines the reports of the Commission. It is not unusual to find, for instance, Belgian or British members of the Commission taking a more critical interest in the reports from the Governments of their own countries than from others. "The immediate result of this attitude, combined with the great reputation for wide colonial experience of several of the members of the Commission and the care and diligence with which they have

[1] Deceased, August 1929.

[2] Minutes, viii, p. 51.

all performed their duties, has been to confer exceptional weight on their considered observations."[1]

Perhaps the most difficult test of the strictly technical character of the members of the Commission occurred during the course of the Eleventh Session, June and July 1927, on the question of an opinion sought by the Council as to the desirability of adding to the Commission a member of German nationality, for whose appointment funds had already been voted by the Assembly.[2] Here was a particularly clear instance of the way in which political and national considerations constantly invade the technical services not only of the necessarily impartial body like the Permanent Mandates Commission, but of the League Secretariat as a whole. But in this case it is difficult to understand why the Council, in its apparent desire to be courteous in consulting the Commission, should have chosen to do it in a manner so embarrassing. The Council which is constituted to deal with political questions, did not ask the Commission's opinion about the appointment of a particular German, the personal fitness of whom would have given the question a purely technical aspect, but about adding someone of German nationality, a proposal which almost forced the Commission to give an opinion on political grounds.

The issue hung like a cloud over the Commission for eight days, and occasioned remarks which some members might well wish were expunged from the records.

Certain members urged that the request of the Council should either be ignored or that the Commission should plead its own incompetence. Others held that the Commission not only would diminish its authority with the Council if it declined to give the advice sought by the Council, but that its competence extended to any subject relating to mandates upon which the Council sought its advice. But this interpretation would lead to difficulty, for if it was admitted that the

[1] W. E. Rappard, *International Relations as Viewed from Geneva*, 1925, p. 36.

[2] See Minutes, xi, pp. 11, 15, 132–138, 170, 178–179.

Council could extend the Commission's competence, could they not also reduce it, thus making an independent technical body, whose status under the Covenant is independent of the Council, dependent on a political body (the Council) which is subject to the changing requirements of politics? Moreover, if it was decided by a majority to give no reply, the public would not fail "to ascribe their decision to motives of a national character" . . . accusing the Commission of "refusing to allow the Power which had formerly possessed the mandated territories—which was familiar with them and which was in a position to have better information upon them than any other Power—the right of inspecting the administration of those territories".[1]

It was evident that the substance of the question as well as the form would have to be considered, namely, "whether the ultimate appointment of a German member involved any technical disadvantage or not", as the Chairman expressed it.

Certain members of the Commission who opposed the addition of a German member, or, to put it more precisely, who opposed the discussion of the principle which involved the question of the desirability of the appointment of some member of German nationality to the Commission, either refused to discuss the principle or discussed it "with regret". Could any German assist impartially in the administration of territories of which the Germans were deprived? Could any German have a desire to support and strengthen the Mandates System? Could, for instance, a former German Colonial Governor join enthusiastically in support of a colonial policy the complete reverse of his own? Could a German fulfil the functions of a member of the Mandates Commission conformably with its spirit, "except at the price of constant and repeated triumph over his personal and national feelings"?[2]

A few days later the Chairman read a telegram from the "Union Coloniale Française", stating that the Union, "which

[1] See Minutes, ix, p. 137.

[2] *Ibid.*, p. 140.

combines all private interests in French colonies, is deeply affected by the news of the forthcoming appointment of a German member to the Mandates Commission and unanimously enters an energetic protest against any such eventuality . . . the Union Coloniale considered it dangerous that a representative of a former Power possessing control there should supervise the administration of the Mandates . . . a measure which is calculated to disturb the peace of the mandated countries . . ."[1]

Here, indeed, was a strong national appeal. The Chairman simply said that the Commission "would take note" of the communication, that he did not think the Commission would be caused thereby "to change its views on the subject", and that "it would remain entirely impartial".

Three views seemed to prevail among the members on the day when the matter was finally disposed of. The majority considered that "the advantages to be anticipated from the co-operation of a member of German nationality are greater than the difficulties to which the Commission would thereby be exposed, provided that the new member is a completely independent expert". A minority group continued to hold the opposite opinion. A third group, considering the whole question a political one, thought that there was no need to express an opinion.[2]

The Commission finally adopted the following text:

"The Permanent Mandates Commission has carefully considered the question referred to it by the Council as to an increase in its membership with a view to the appointment of a German member.

"In the first place the Commission was unanimous in observing that the Council, in referring the matter to it, had emphasized the fact that the Assembly's approval of the sum intended to meet the expenses which would be incurred in the event of the appointment of a German member of the Commission was of political significance; and that accordingly the Council, in applying to a body whose character was fundamentally technical, only desired it to state whether there were any technical objections to the proposal.

[1] See Minutes, ix, p. 170.

[2] *Ibid.*, p. 182.

"The majority of the members of the Commission concurred in the view that there was no technical objection to the appointment of a new member.

"The minority is prepared to welcome whatever decision the Council may think fit to take, but considered that it should abstain from expressing an opinion on account of the political character of the question."[1]

The foregoing case is cited to illustrate the difficulty of separating national from purely technical considerations. It indicates the force with which special interests can invade the counsels of purely technical, impartial bodies established to guarantee complete equality of treatment without any interference with or dependence on the Governments under which they are nationals. It may or may not be significant, in this connection, that the members of the Commission who held the minority opinion on the addition of a German member were all nationals of Mandatory States. If private interests in France and Belgium made the mistake of opposing German membership on the Mandates Commission on grounds of nationality, it should also be added that certain German interests made the same mistake in insisting on an appointment on similar grounds.

Judging from the published minutes of the Commission since the appointment of Dr. Kastl, a German, there is no reason to doubt that the same high-minded impartial attitude animates his approach to mandatory supervision and administration as is characteristic of all other members. As a former official of one of the territories, South-West Africa, his judgment has often been relied on in matters relating to this as well as to other African mandates.

But if, in general, members of the Mandates Commission are free and impartial in the performance of their trust, when once appointed, there is some evidence for regretting the manner in which nationalism has asserted itself in making the replacements for members deceased or resigned. Seven such

[1] See Minutes, ix, p. 183.

replacements have been made since 1922, and in every instance but one the seat was filled by a national from the same State as the one vacated.[1] Although appointments are made by the Council, States have in certain instances virtually claimed the right to name successors. Should this practice continue, the choice of experts to serve on the Mandates Commission would be limited to the nationals of the nine States from which they were first chosen. Such a condition would be almost certain to diminish the prestige and the moral authority of the Commission as a whole, in spite of the eminent fitness of its individual members. Nowhere is it more important than in colonial matters, where international suspicions are proverbially rife, that national interest be reduced to a minimum in the selection of the members to a body of experts, who must satisfy all countries that economic equality and proper protection to the natives is being accorded.

Procedure

Turning from the question of personnel to the question of the procedure of the Permanent Mandates Commission, it will be seen that the apparently modest constitutional functions—those of receiving and examining the annual reports drawn up by the Mandatory Powers themselves on their own administration—have in practice evolved into a supervisory power almost dangerously effective as a weapon against negligence, abuse, and maladministration. As one author puts it, "the mandate system may be toothless, but it is not bootless".[2] All this is the more surprising when it is considered that the Commission can

[1] In 1922 M. Pina, of Spain, was replaced by Count de Ballobar, who, in 1923, was replaced by M. Palacios. In 1923 Mr. Ormsby-Gore was replaced by Lord Lugard. In 1924 M. Yanaghita, of Japan, was succeeded by M. Yamanaka, followed, in 1928, by M. Sakenobe. In 1926 M. Beau, of France, was followed by M. Merlin. In 1928 Mme Wicksell, of Sweden, was followed by Mlle Dannevig, of Norway.

[2] Moon, *Imperialism and World Politics*, p. 509.

only advise the Council, which, not being an organ of a super-State, "can itself but recommend and not enjoin".[1]

The reasons for the extraordinary influence and power of the Mandates Commission are to be explained by the character and prestige of its members already noted, but not less by the spirit in which it collaborates with the mandatories and their representatives; the methods employed in eliciting and examining information; the mutual deference shown between the Commission and the Council; the opportunity afforded any nation each year to discuss any aspect of mandatory policy and practice in the Assembly; and the way in which the Commission can focus public opinion and international criticism on any aspect of this new trusteeship relation. This influence is by no means confined to mandatory interests. M. Albert Sarraut, French Minister of the Colonies, rightly declared in 1923: "Reforms accomplished in one place will inevitably penetrate elsewhere. Whether we like it or not, colonial questions have ceased to be purely national; they have become international, placed under the eyes of the world."[2]

The sessions of the Mandates Commission are usually conducted in the presence of and in collaboration with the responsible administrators of the territories in question. The spirit animating all present is that of association in a great enterprise of international co-operation rather than that of cross-examination in a criminal trial. Not infrequently these administrators seek, on different issues, the counsel and advice of the Commission, several of whose members have had wide and varied experience in colonial administration. These representatives of the Mandatory Power willingly supply information on the most detailed questions growing out of their reports, and the Commission is not slow to register appreciation, satisfaction, and congratulation on every mark of progress noted. But when reproof is administered, it is done courteously yet firmly, with no apparent discrimination between great

[1] Rappard, *op. cit.*, p. 34.

[2] *Afrique Française*, 1923, p. 254.

Powers and small. Or, if on a rare occasion an accredited representative seems disinclined to answer questions, he finds himself at once in the presence of ten unrelenting Commissioners who can be pitiless in the exercise of their almost unlimited power of examination.[1] Moreover, the public is almost certain to be against the party who refuses to divulge requested information.

In practice the Mandates Commission not only "receives and examines the annual reports of the Mandatories", confining its attention passively to such data as the Mandatory desires to submit. The Commission, at its first meeting, and in a later revision, devised a formidable and comprehensive questionnaire of 118 questions, which indicates the kind of information the Commission proposes to examine.[2] The annual reports, brief and inadequate at first, have now come to be based on this questionnaire covering, in detail, subjects which the Mandatory might well have wished to leave untouched.[3] The Commissioners exercise rare skill in noting omissions or in detecting violations of the spirit and letter of the Covenant and of the mandate.[4]

[1] See Minutes, xi, pp. 87–90, where the representative for the Union of South Africa, Mr. Smit, challenged the Commission's right to question him on the legal relation between the Union and South-West Africa, a tender point involving the issue of annexations and the residence of sovereignty.

[2] The first "list of questions" comprised about fifty questions arranged under thirteen general captions, a special list for the "B" and "C" types of mandate. See Minutes ii, Annex 3, pp. 81, 83.

[3] Objection was taken by Sir Austen Chamberlain in the Council, September 3, 1926, to the revised questionnaire on the ground that the Mandates Commission was "extending its authority to the point where the Commission rather than the Mandatory was administering the mandate". See Minutes, x, p. 14, for the view of the Chairman of P.M.C. *re* Questionnaire.

[4] The questionnaires rest on well-established authority, the Council having formally approved the principle by resolution, October 10, 1921, and September 4, 1922. They are of three types, conforming to the terms of mandates "A", "B", "C", provided for in paragraphs 4, 5, and 6 of Article 22. The revised and enlarged questionnaire proposed by the Commission in its Ninth Report to the Council, June 25, 1926, was opposed in the Council, particularly by Sir Austen Chamberlain, and the Powers

The portion of the original questionnaire pertaining to economic equality reads as follows:[1]

"VII. Economic Equality.

"1. What provisions are made to secure economic equality as regards:

(*a*) Concessions?
(*b*) Land tenure?
(*c*) Mining rights (in particular, prospecting)?
(*d*) Fiscal regime (direct and indirect taxation)?
(*e*) Customs regulations (imports, transit)?

"2. What are the exceptions, if any, in each category?"

But, in addition to the annual reports of the Mandatories, which include the texts of all laws and administrative regulations in force in the territories under mandate,[2] the Commission is generally supplied with the special reports of official and independent commissions on particular aspects of colonial policy.[3]

Also the Mandates Section of the Secretariat follows parliamentary debates relative to territories under mandate, books and magazine articles, newspapers, pamphlets, and publications of varied origins dealing with the subject, all relevant matters being brought to the attention of members of the Commission in periodic *dossiers*.[4] Individuals and societies

concerned were asked to amend it. The Commission examined the subject in its Eleventh Session, sending its conclusions to the Council, July 6, 1927. The revised questionnaire, therefore, is an internal document not yet formally approved by the Council.

[1] Besides the heading of Economic Equality, the questionnaire covers such items as Labour; Slavery; Arms Traffic; Trade and Manufacture of Alcohol and Drugs; Liberty of Conscience; Military Clauses; Education; Public Health; Land Tenure; Moral, Social, and Material Welfare; Public Finances; and Demographic Statistics. See Minutes, ii, Annex 2, pp. 81, 82, and Minutes, ix, Annex 10, pp. 231, 232.

[2] By request of the Council at its sessions, August 29, 1924, and September 15, 1925.

[3] Such as the Ainsworth Report on New Guinea, the Report of the Hon. W. Ormsby-Gore on his visit to West Africa, 1926, the Hilton-Young Report on East Africa, etc.

[4] See Minutes, ii, pp. 5–8, for an excellent account of the nature of the Mandates Section as reported by its Director.

make their way to Geneva with every conceivable kind of grievance or complaint, so that no flagrant violation of the mandate can occur without coming to the attention of the Commission in its early stages. Many, if not most, of these complaints are doubtless unfounded, but if suspicions persist, they readily find their way into the questions put by some member of the Commission. The Mandates Section, with complete impartiality, keeps in touch with the tendencies and opinions of importance for the work of the Commission.

The means, therefore, by which the Commission at present is informed on any points, such as the maintenance of the Open Door in the mandated territory, are the following: (*a*) the questionnaire and the annual reports of the Mandatories furnishing the information suggested by the questionnaire; (*b*) discussion with the accredited representatives on supplementary points; (*c*) petitions sent to the Council by dissatisfied groups; (*d*) advising the Council to request special information; (*e*) constant unofficial information coming to the notice of the Mandates Section of the Secretariat.

It must be remembered that the procedure of the Commission, the limitation and definition of its constitutional functions, are still in process of evolution, and will probably always remain so. On two points in particular—dealing with petitions, and making inquiries on the spot—no wholly satisfactory procedure has yet been found, although both, in principle and practice, have been much before the Commission.[1] By many it is held seriously to restrict the free, independent, and

[1] Procedure on petitions has been discussed in numerous meetings of the Commission. See especially Minutes, iii, pp. 62–67, on the "Inquiry regarding the Bondelzwarts Rebellion of 1922", when the question was one of admitting (not summoning) evidence from the Anti-Slavery Society on behalf of the natives. Evidence condemnatory of the report of the Union of South Africa was admitted in writing. Minutes, viii, pp. 156–160, record the refusal of the Commission to hear delegates from Syria in person, although they were heard by members privately. Minutes, ix, pp. 47–50, 189–193, outline certain regulations for the audition of petitioners. Minutes xii, pp. 176–178, summarize the procedure now in force on petitions.

impartial work of the Commission, organized to ensure the proper performance of the trust committed to the several States acting as guardians, not to be able to hear petitioners directly or to pay official visits to the territories in question.[1]

The chief obstacle so far has been political. It is averred that the prestige of the Mandatory would be injured, in the first instance, by appearing as complainants on the same level, and, in the second, by casting a shadow over the rights and dignity of the Mandatory within the mandated territory. Both objections are likely to remain until States are less jealous of their prestige and dignity in matters relating to the transaction of international business.

There are, however, grave practical difficulties which make the Commission, as a whole, hesitant to enlarge the scope of its functions by establishing wide precedents on both points. Complainants of every description would be too greatly encouraged if the road to Geneva were made too easy. Also, the temptation to exploit this privilege for political purposes would be ever present. And again, it is possible that those natives with the best complaints would often be least able to make them.

Inquiries on the spot are likewise beset with practical difficulties.[2] Even to use a less legal term and substitute "visit" for "inquiry", connoting a less critical attitude toward the Mandatory, the Commission has been unable to agree that its position would be strengthened by this practice. While direct contact with peoples and territories would doubtless enable the Commissioners to visualize general situations more clearly, they would, on the other hand, inevitably be thrown into such

[1] The Inter-Parliamentary Union, in its 22nd Session, 1924, recommended empowering the Mandates Commission to make "inspection of mandated areas on the spot". Cf. *Compte Rendu*, 1924, pp. 68, 667.

[2] On "inquiries on the spot" see the discussion arising out of an invitation from the Arabs in Palestine to visit that territory, Minutes, vii, pp. 123–129, and ix, pp. 56, 190. Lord Lugard, while in favour of granting audition to petitioners, properly selected, was much opposed to official visits by the Commission as a whole or by sub-committees to the mandated territories if undertaken on the Commissioner's own initiative or on that of unofficial petitioner.

close official contact with the Governors-General and High Commissioners, that their position of impartiality would come to be more suspected than at present. Moreover, the real issues are usually so intangible that a short visit could be of little practical benefit.

It is difficult to see how either practice could greatly facilitate the Commission's work in supervising equality of economic opportunity, unless the League were more clearly recognized as sovereign over the mandated territories, assuming functions of administration as well as supervision. And even so, would a local governing staff under the League consent to a kind of irregular espionage over their work?

Professor Laski, who holds the view that sovereignty over the mandates resides in the Council of the League, suggests that there should "be accredited to each mandated territory of the League a commissioner who will act as its ambassador upon the spot".[1] This commissioner, he argues, should always come from a State other than the Mandatory Power, should watch on its work and report independently to the League. The commissioner and his agents would, among them, speak the most usual languages of the territory and would act as "an independent and continuous check upon the work of the Mandatory Powers". At present it appears to Professor Laski that the Mandatory merely reports from time to time that its conduct has been good.[2]

If Mr. Laski's suggestion is premature and impracticable, it is not an academic proposal superfluous to the needs of the Permanent Mandates Commission, as was shown by its Eighth

[1] Cf. *A Grammar of Politics*, p. 597. The British Labour Party adopted a resolution in 1925 to the effect that: "This Conference is further of opinion that it is essential in all tropical and sub-tropical dependencies to invite the League of Nations to elaborate a code for the protection of native rights and appoint an 'Observer' to the governing body of each Dependency and Mandated Territory whereby all such . . . territories of the British and other Governments may benefit from the impartial supervision of the League of Nations pending full self-government."

[2] *Ibid.*, p. 598.

Session called especially for the "Consideration and Determination of the General Causes of the Recent Disturbances in Syria".[1] The Commission found itself in a helpless position because of the utter inadequacy of the documentation furnished by the Mandatory. The Vice-Chairman of the Commission, speaking of the Mandatory's report, complained that it "was silent in regard to a certain number of facts which interested the Commission, and had glided over points about which the Commission was concerned".[2] In his general criticism all the members of the Commission concurred, except the one from the Mandatory in question.

But even more embarrassing was the fact that the Commission, in a previous examination of the report on Syria, had expressed its satisfaction and congratulated itself on the French administration there "at the very time when the extremely serious events which had since broken out were developing". The documents then supplied "did not leave room for any misgiving and excluded any keen anxiety".[3]

Obviously the Permanent Mandates Commission cannot often be subjected to such ridiculous performances and still retain the confidence and prestige necessary to the fulfilment of its task. Nor will the remaining nations of the world, in whose interests and in whose stead the Commission and the Council are presumed to function in such matters, be likely to overlook such reflections. A League commissioner upon the spot would not only bring the guardian into actual touch with the minor, but would reassure each separate participant in the trusteeship that no unequal treatment prevailed as between the trustees and the minor, his properties and resources.

Fortunately the Mandates Commission is not often so handicapped. It succeeds exceptionally well in securing reliable and adequate information, despite *ex parte* appearances. Moreover, the effects of its conclusions, sent to the Council, are very far-

[1] Minutes, viii (Extraordinary Session), Rome, February 16 to March 6, 1926, *passim*.

[2] *Ibid.*, p. 48.

[3] *Ibid.*, p. 51.

reaching. The Commission and the Council can only recommend. But at present all the Mandatory States have parliamentary governments in which public opinion cannot be overlooked.[1] Very naturally the party in power will employ for political purposes any item of praise and commendation of its administration, especially when it comes from a high and competent authority. Similarly the opposition will make use of any criticisms and strictures.

This instrument would doubtless be even more effective if the comments of the Mandates Commission did not follow by almost eighteen months the events on which they are based, thus finding public opinion on the issues less interested and alert. This delay is caused partly by the time taken by the Mandatory to compile and publish the report of the previous year and partly by the additional time which elapses until the Commission can consider the reports, prepare its findings, and bring them before the Council.

The Minutes of the Sessions of the Permanent Mandates Commission are exceptionally well reported and furnish the public with an excellent understanding of the detailed issues of the territories involved. The Sixth Commission of the Assembly deals annually with the work of the Permanent Mandates Commission, which makes it possible for general policies and practices to be called to the attention of the Assembly as a whole and to be discussed there.

It is, of course, not possible for lengthy and detailed debates to take place in the Assembly on various aspects of the operation of the Mandates System. But it is somewhat surprising that not more States have instructed their delegations to exhibit a lively and critical interest in the annual report on mandates brought to the Assembly from the Sixth Commission. It

[1] The Marquis Theodoli, in opening the Tenth Session of the Commission, referred to the wide review of Press comments on the work of the Commission, concluding that "perhaps in no other field of League work is the support of well-informed public opinion more vital than in the matter of mandates". Minutes, x, p. 10.

would seem that all non-Mandatory States in particular would wish to notice the administration of equality regulations which were designed very especially for their benefit.[1]

[1] "The success or failure of this mandatory system will depend very largely upon the non-Mandatory Powers; there are something like twenty-seven of them represented in this Conference. It is for you to criticize the Powers who are carrying out mandates under the control of the League of Nations, and therefore I think it is for this Conference to be the watch-dog of the mandatory system."—Sir Beddoe Rees, of Great Britain, at the 22nd Conference of the Inter-Parliamentary Union.

CHAPTER VI

THE UNITED STATES, THE OPEN DOOR, AND THE MANDATES SYSTEM

I

The State Department and the Open Door

By Article 119 of the Treaty of Versailles, and by Article 11 of the peace treaty between the United States and Germany, which is identical, "Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions".

No disposition of these rights and titles is valid without the express agreement of each of the Powers in whose collective favour Germany renounced her rights.[1]

Accordingly, at the present time, from the point of view of the United States as the Associated Power, all the "C" mandates, except the Island of Yap, are of doubtful validity, and will remain so until the formal approval of their terms has been agreed to by the Government of the United States.[2] With all the Mandatories holding "B" mandates the United States has negotiated special treaties recognizing, under certain conditions, the validity of the mandate.[3]

The "A" mandates, comprising former territories belonging to Turkey, with whom the United States was not technically at war, have also been made the subject of treaty agreements between the Mandatories and the United States on the ground that a common victory over Germany and her Allies having been made possible by the United States, the latter is "entitled

[1] See *American Journal of International Law*, article of C. N. Gregory, 1921, ii, p. 420. Few international lawyers assert the principle of divisible sovereignty as obtaining in the case of these renounced territories.

[2] *United States Tariff Commission: Colonial Tariff Policies*, p. 266.

[3] See Appendix for form of such treaty.

to insist that no measure can be properly taken"[1] which would discriminate against the nationals of the United States in those territories.

Thus there was created a juridical, political, and economic problem, revolving around the issue of the Open Door, which in the early years not only seriously retarded the inauguration and development of the Mandates System, but which has behind it to-day the whole weight of a Great Power in its refusal to admit the ground lost by President Wilson to the British Dominions at the Peace Conference.

The motives behind these Open Door controversies may not be altruistic. But if Open Door conditions, once established, make for better international relations as well as better economic conditions for the natives, the results of this international controversy may not be inconsistent with the aims of the mandatory principle.[2] It is generally admitted that the weakest spot in the Mandates System is the "C" mandates, to prevent the outright annexation of which has more than once presented a formidable challenge to the Permanent Mandates Commission.[3]

It can hardly be said that the relation of the United States to the mandates has always been actuated by the ethical motives which are implied in the "sacred trust of civilization". On ethical grounds the "Armenian Mandate" should not have gone by default. Yet no nation assumed it. American interest in the validity of the mandates first became acute over Iraq

[1] Secretary Hughes, in a speech in New York, January 23, 1923. See *Current History*, March 1924, p. 1063. For further discussion of this point see in the *Michigan Law Review*, May 1925, article by Quincy Wright, "The United States and the Mandates".

[2] Cf. R. L. Buell "'Backward' Peoples under the Mandates System", *Current History*, June 1924, p. 395: "One of the greatest possible steps toward world peace would be a treaty signed by ten of the leading colonial Powers, guaranteeing the Open Door in their colonies and just treatment of natives, as provided in the mandates themselves, subject to the supervision of the Mandates Commission."

[3] See particularly discussions over South-West Africa, Minutes, vi, p. 63, and xi, pp. 66, 87.

and centred on the subject of equal economic opportunity to exploit its oil resources.[1] The correspondence between the United States and Great Britain over this mandate was finally discontinued when a satisfactory arrangement was made between the Standard Oil and six other American Companies with the Anglo-Persian Oil Company over Iraqian oil. The second controversy involved the Island of Yap, under "C" mandate, important only as a cable junction, and settled finally in a special treaty with Japan. The controversy over the "B" mandates was more perfunctory, pertaining to the restrictive clauses guaranteeing the Open Door to nationals of "States Members of the League", while as a non-League State the United States wanted similar rights, which, in fact, were already covered in most of this territory by the Berlin Act and its revisions applying to Central Africa.[2] The remaining "C" mandates, though not approved and recognized by the United States, do not seem of sufficient economic importance to warrant great insistence in pressing her claims.

Juridically, the question offers some perplexing aspects.[3] If Germany once renounced her oversea possessions to the Allied and Associated Powers in signing the Treaty of Versailles on June 28, 1919, how could she renounce them a second time in the separate Peace Treaty with the United States? Even though the receiving States could not agree as to the way these former German territories should be disposed of, the legal case of the United States was hardly rendered stronger by asking Germany to renounce her colonies twice.

However, the legal case of the United States as to the terms

[1] Lord Curzon's statement that "the Allies floated to victory on a wave of oil" suggests an important motive in Open Door policy. The Colby-Curzon correspondence in this connection is illuminating. See *Parliamentary Papers*, Cd. 1226 (1921).

[2] Certain rights and privileges were also accorded to missionaries in these mandated territories. See U.S. Treaty Series, 690.

[3] See especially articles by H. Rolin, *Revue de Droit International et de Législation Comparée*, 1920, p. 357; and Quincy Wright, *op. cit.* Also article by Arnold D. McNair in *Cambridge Law Journal*, April 1928, "Mandates".

upon which the "B" and "C" mandates are to be disposed of is doubtless exceedingly strong.[1] Sovereignty passed from Germany to the Principal Allied and Associated Powers. At this point, then, a collective title existed over the territories, and, in fact, this is said by certain authorities still to be the residence of their sovereignty. It was on this basis that Secretary Colby wrote to the Council of the League (which disclaimed jurisdiction in the matter) on February 21, 1921, that the "approval of this Government of all mandates issued is essential to the validity of any determinations which may be reached".[2] The United States protested the distribution and definition of mandates which were issued in her name without her consent.[3] It was true, of course, that America was represented on the Supreme Council on May 7, 1919, when the "B" and "C" mandates were allocated. But this action was not ratified by the United States. Nor was the United States consulted in the final drafting of the terms of the mandates so allocated, beyond being invited to sit at the Council table to discuss them, refusal of which could hardly mean forfeiture of her legal right in the case.

Secretary Hughes acted on the same juridical principle as his predecessor, holding "that neither the Allied Powers nor the League had the right to award or define a mandate without the consent of the United States. It regarded the title of all Mandatories as invalid without this consent."[4] America's failure to join the League, together with the divided treaty-making powers in her form of government, made the problem

[1] Professor Rappard, in a session of the Permanent Mandates Commission held August 5, 1922, expressed the opinion that even the Council of the League of Nations could not "modify the attribution of a mandate. This power, as far as the 'B' and 'C' mandates are concerned, appeared to be solely vested in the Supreme Council of the Allied and Associated Powers, including the United States". Cf. Minutes P.M.C., ii, p. 46.

[2] See *Minutes of the Twelfth Session of the Council*, pp. 75, 76, for reply.

[3] Cf. Blakeslee, "Mandates of the Pacific", in *Foreign Affairs* (*U.S.*), September 1922, p. 100.

[4] *American Journal of International Law*, 1921, ii, p. 420.

exceedingly irritating and difficult for the other Governments concerned. But these practical difficulties must not obscure the juridical principle by which the United States was guided and which still obtains in her attitude toward the "C" mandates.[1] Moreover, in the case of the "C" mandate of Samoa, the former Open Door treaty between the United States and Germany is still regarded as in force for the former country, thus creating another irregularity for the existing Mandatory.[2]

Whether the United States had legally so strong a case in the "A" mandates may be doubted. Her claim was made on political as well as legal grounds to the effect that the status of these territories was changed by the assistance of the United States in the war; that America had pre-war interests there, which could not be overlooked; and that at the Peace Conference the United States had pointed out that all territory in Africa and the Near East seized during the war must be governed in such a way as to assure equal treatment to the commerce of all nations. The position, as stated by Secretary Colby in his note to the British Government on November 20, 1920, was as follows:[3]

"Such powers as the Allied and Associated nations may enjoy or wield in the determination of the governmental status of the mandated areas accrued to them as a direct result of the war against the Central Powers.

"The United States, as participant in that conflict and as a contributor to its successful issue, cannot consider any of the Associated Powers, the smallest not less than itself, debarred from the discussion of any of its consequences, or from participation in the rights and

[1] Special treaties with each of the "B" Mandatories recognizing the mandate and guaranteeing the Open Door were made by the United States as follows: with France for Cameroons and Togo, March 3, 1924; with Belgium for Ruanda-Urundi, January 21, 1924; with Great Britain for Tanganyika.

[2] See *Minutes P.M.C.*, vii, p. 24. The Chairman of the Mandates Commission expressed the view that the United States not having signed the Treaty of Versailles, the Convention of 1900 was still in force for that State.

[3] Cf. note addressed by Secretary Colby to Lord Curzon, May 12, 1920, Cmd. 675. See also Temperley, *op. cit.*, vi, pp. 507–510.

privileges secured under the mandates provided for in the Treaties of Peace. . . .

"The United States is undoubtedly one of the Powers directly interested in the terms of the mandates, and I therefore request that the draft mandate forms be communicated to this Government for consideration before submission to the Council of the League.

"The fact cannot be ignored that the reported resources of Mesopotamia have interested the public opinion of the United States, Great Britain, and other countries as a potential subject of economic strife. Because of that fact they become an outstanding illustration of the kind of economic question with reference to which the mandate principle was especially designed . . . (and) . . . this principle was accepted in the hope of obviating in the future those international differences that grow out of a desire for the exclusive control of the resources and markets of annexed territories."

The last paragraph of the Colby note, just quoted, indicates that the active interest of the United States in the "A" mandates, especially in Iraq, went farther than the assertion of a doubtful theoretical legal right. The principle of equality of opportunity to develop the reputed resources of this territory was the chief issue of the diplomatic controversy, as a study of the full correspondence will show.[1]

The Government of the United States apparently understands that the advantages of the sacred trust of civilization set forth in the mandate principle are to accrue both to the peoples under mandate and to the economic and other interests of the world at large. But the American State Department seemed to see a violation of this principle in the special agreements between Great Britain and France whereby exclusive mutual concessions and advantages were agreed upon, thereby closing the door to the nationals of the United States. These agreements seemed not only to violate Article 22 as understood by the United States, both in Paris and later, but were regarded also as inconsistent with the draft mandates which were (and are) specific on the point of economic equality.[2]

[1] Correspondence reprinted in *International Conciliation*, No. 166.

[2] See Article of the Palestine Mandate and Article 11 of the Treaty of Alliance between Great Britain and Iraq. Also Article 11 of the Mandate for Syria and Articles 6 (7) of the "B" mandates.

The first of these, the Sykes-Picot Agreement, was made in the heat of the war, May 9, 1916, whereby Great Britain and France aimed to preserve their unity in the war by making a territorial division of the Near East, over which each was to have particular and exclusive interests. When this agreement was published on January 8, 1920,[1] it was badly received by the American delegation in Paris, which felt that President Wilson should have been informed earlier of any such Allied understandings.[2]

American suspicions were by no means allayed when a second Franco-British understanding was effected in the San Remo Petroleum Agreement of April 24, 1920, by which the two Governments agreed to support their respective nationals in securing oil concessions in certain territories, including Rumania, Asia Minor, Galicia, Russia, French, and British Crown Colonies, and in certain other countries by mutual consent. Within three weeks after this the first American note of protest was sent to the British Foreign Office.

The chief items of the San Remo Petroleum Agreement which seemed so ominously to violate the Open Door principle were as follows:[3]

"(1) The agreement was based on 'the principles of cordial co-operation and reciprocity in those countries where the oil interests of the two nations can be usefully united'.

"(2) Former enemy oil concessions in Rumania were to be divided, 50 per cent. to British and 50 per cent. to French interests. An equal division was to obtain in the voting power of new companies formed.

"(3) The two Governments pledged their joint support 'to their respective nationals in their joint efforts to obtain petroleum concessions and facilities to export, and to arrange delivery of petroleum supplies, in the territories of the late Russian Empire'.[4]

[1] In the *Manchester Guardian*. See *International Conciliation*, vol. ccxiii, p. 272.

[2] See Baker, *Woodrow Wilson and the World Settlement*, vol. i, p. 7.

[3] See British White Paper (Cmd. 675) for full text. Appendix E.

[4] After Russia adopted the new economic policy, ambitious oil magnates forgot the San Remo Agreement of co-operation. At the Genoa Economic Conference in the spring of 1922, Krassin surprised the delegates with

"(4) The British Government agreed to grant to the French Government or its nominee 25 per cent. of the net output of crude oil at market rates of all Mesopotamian oil produced by Government action, or 15 per cent. participation in oil shares if privately produced. Britain was to have 'permanent control' of such petroleum company.[1]

"(5) It was agreed that the building of pipe-lines over French mandates territory was to entitle France to special consideration for procuring a portion of the oil from the Anglo-Persian Company's supplies. In turn, oil so conveyed and exported was to be free from export and transit duties, and all materials necessary to the construction of refineries, railways, pipe-lines, and other equipment was to be free from import duties and wayleaves.

"(6) The French Government agreed to give any Franco-British oil companies 'of good standing' facilities for the acquisition of oil concessions in the French colonies, protectorates, and zones of influence, including Algeria, Tunis, and Morocco, provided such companies contain at least 67 per cent. French interests.

"(7) Great Britain agreed to give French subjects similar advantages for oil prospecting in the Crown Colonies, 'so far as existing regulations allow'."

The United States found it difficult to reconcile the San Remo Petroleum Agreement with the mandatory principle as it relates to economic equality, and Secretary Colby was at pains to show this inconsistency in his note to Lord Curzon, dated November 20, 1920.[2]

Lord Curzon's reply, dated February 28, 1921, dealt at

the disclosure that the Royal Dutch–Shell combine was negotiating with the Moscow Government for a monopoly of petroleum exports from Russia. Following this, protests from French oil interests defeated the Royal Dutch–Shell negotiations. See *Proceedings of Genoa Economic Conference*, and Moon, *op. cit.*, p. 468.

[1] The Colby note to Lord Curzon, November 20, 1920, made particular reference to this phrase, "shall be under permanent British control". The whole San Remo Agreement was dealt with at length, concluding with: "It is difficult to harmonize that special arrangement with your statement that concessionary claims relating to those resources still remain in their pre-war position." Quoted from Lord Curzon's reply of August 9, 1920.

[2] Secretary Colby urged: (1) that the Mandatory adhere and conform to the principles agreed to at Paris and incorporated in the draft "A" mandates; (2) that equal treatment be guaranteed the nationals of all States; (3) that no exclusive economic concessions or monopoly of any economic privilege essential to the exploitation of any commodity be granted; (4) that reasonable publicity should be given to applications for concessions in the mandated territories.

length with the history of Mesopotamian oil concessions, tracing the complex network of interests from the time of Abdul Hamid in 1881 to the San Remo Agreement of 1920, which, he declared, was "not fully understood". Insisting that this agreement "aimed at no monopoly or exclusive rights", he desired "to make it plain that the whole of the oilfields to which those provisions refer are the subject of a concession granted before the war by the Turkish Government to the Turkish Petroleum Company".[1] Then, adding that the United States Government will presumably insist on similar recognition of a pre-war prospecting licence granted to the Standard Oil Company in Palestine, and referring to the disinclination of the United States to permit the Mexican Government to interpret its new constitution as retroactive in regard to property rights, he concluded by averring that "His Majesty's Government are, nevertheless, glad to find themselves in general agreement with the contention of the United States Government that the world's oil resources should be thrown open for development without reference to nationality". He could not fail to observe, however, "that by Article 1 of the Act of the Philippine Legislature of the 31st of August, 1920, participation in the working of all 'public lands containing petroleum and other mineral oils and gas' is confined to citizens or corporations of the United States or of the Philippines, and I cannot but regard this enactment as in contradiction with the general principle enunciated by the United States Government". After alluding, finally, to the exclusion of British interests in Hayti and Costa Rica, the note ended with the

[1] This important point was never admitted by the United States. Cf. Memorandum of American Embassy to the British Foreign Office, August 24, 1921: "The Government of the United States is unable to conclude that any concession was ever granted by the Turkish Government to the Turkish Petroleum Company." In fact, Great Britain failed to secure confirmation of this concession by the Turks at the Lausanne Conference in 1923, partly through American opposition. See Proceedings in Cmd. 1814 (1923), pp. 395–405. Alleged pre-war concessions have made the whole question almost insoluble if based on documentary rights.

assertion that the American charge of discrimination in Tanganyika was "based on misapprehension".[1]

It should be remembered that while this long controversy on oil rights was in progress, the League Council was waiting to approve the "A" and "B" mandates, the form of which was the almost forgotten subject of the correspondence.[2] The United States refused to expedite the matter by appearing before the Council and negotiation with each Mandatory separately took a very long time.

The Curzon note of February 28, 1921, cited above, was the last to be published, hence the manner in which an accord was finally reached is not certain.[3] However, a letter from Sir Auckland Geddes, British Ambassador, to Secretary Hughes, dated May 3, 1921, indicates that the question of the Turkish Petroleum Company was being dealt with by the American Ambassador in London and the British Foreign Secretary.[4] But meanwhile the great oil combines were negotiating directly, and when, finally, the Standard Oil and several other American Companies were given 25 per cent. participation in the Turkish Petroleum Company's rights in Mesopotamia, the governmental negotiations seemed to cease.[5] How this international oil

[1] Cf. *Parliamentary Papers*, Cmd. 675 (1921). The allusion to Tanganyika refers to Secretary Colby's charges that British nationals were accorded special privileges in that territory.

[2] The general subject of the controversy was on the terms of the "A" mandates. But the particular issue of oil rights almost obscured the general issue of the equality clause.

[3] It was not until May 11, 1922, that Lord Balfour, in the name of Great Britain, was able to state to the Council of the League that negotiations with the Government of the United States concerning a draft mandate for Palestine had reached a satisfactory solution.

[4] Cf. Senate Document No. 97, "Oil Concessions in Foreign Countries", 68th Cong., 1st Session, p. 55.

[5] In *Survey of International Affairs* (vol. i, p. 466) it was stated that: "In 1922 American opposition was overcome by an offer which the Anglo-Persian Oil Company, at the suggestion of the British Government, made to the Standard Oil Company and to certain other American interests to surrender to them 50 per cent. of the Anglo-Persian Company's share in the Turkish Petroleum Company's rights to the exploitation of oil in Iraq."

consortium was organized, and whether it fulfils Open Door conditions, will next be considered.

II

The Oil Consortium and the Open Door

The official correspondence, noted above, between the American and British Governments, resulted not in a settlement, but in an understanding. The tortuous history of rival claims on the oil resources of Mosul, covering a quarter century of concession-hunting in the Near East by British, German, American, French, and Dutch interests dealing with a corrupt and changing Government for the Turkish Empire, has woven a network of concessionary rights which neither historians nor Foreign Offices have yet been able to disentangle.[1] The problem was made more complex by the British Government, as such, buying a controlling interest in the Anglo-Persian Oil Company in 1912, and by the transfer to France after the war of the Deutsche Bank's quarter share in the Turkish Petroleum Company.[2] American oil interests pressed upon their Government to protect their claims, more particularly since they were dealing with the British Government in its capacity as an oil corporation. But American interests were themselves divided into the group supporting the Chester concessions[3] on the one hand, and those supporting the Standard Oil and allied companies on the other. The question of the boundary of Mosul which figured so prominently in the

[1] Several fair but inadequate attempts have been made to write this history. See, among others, Karl Hoffman, *Olpolitik und angelsächsischer Imperialismus*, 1927; Ludwell Denny, *We Fight for Oil*, 1928; Davenport and Cooke, *The Oil Trusts and Anglo-American Relations*, 1924.

[2] By the San Remo Agreement of April 24, 1920.

[3] The story of Mosul oil really began in the first decade of this century, when Rear-Admiral Colby M. Chester, American, and William K. D'Arcy, Australian, were prospecting in that region at the same time. The D'Arcy group later formed the Anglo-Persian Oil Company.

Conference of Lausanne in 1923, between Britain and Turkey, only to be left for final settlement by the League Council, was another factor in the process of validating the oil concession with British interests in control.

It is impossible to discuss the high politics connected with the events just mentioned. But the relation of the reconstructed Turkish Petroleum Company with the Open Door policy of the United States necessitates some further attention.

The original Turkish Petroleum Company was formed in 1912 by a combination of British and German interests, partly to forestall the prospects of the Chester concessionary interests, and partly to enhance the cause of Anglo-German friendship. The Deutsche Bank of Berlin took 25 per cent. of the shares, Royal Dutch–Shell 25 per cent., and the National Bank of Turkey (largely British) 50 per cent., which were transferred within a year to the Anglo-Persian Oil Company, controlled by the British Government.[1] The German Government revived an old claim on the Bagdad-Mosul field, and in 1914, with the aid of the British Government, Turkey was forced to confirm this concession. But the Turkish Parliament did not have time to ratify the agreement before war broke out, thus making the German and British claim to Mosul incomplete.[2] It is upon this point that the United States later denied the validity of the concession.[3]

The events of the war altered the status of Mosul several times. A series of secret arrangements between the French and the British was to give Syria to the former, and Palestine and Mesopotamia, including Mosul, to the latter. But as a consequence of British defeats in Mesopotamia, culminating in General Townshend's capitulation in April 1916, the need for

[1] Cf. *Political Science Quarterly*, vol. xxxiii, No. 2, an article by Professor E. M. Earle, "The Turkish Petroleum Company—a Study in Oleaginous Diplomacy".

[2] See *Current History*, January 1926, p. 496, "The Bitter Conflict over Turkish Oilfields", by John Carter.

[3] *Supra*, p. 139.

French aid was so urgent that in the Sykes-Picot Agreement of May 16, 1916, Britain recognized the extension of the French zone eastward beyond the Tigris, including the Mosul district. The mistake of losing Mosul was partially rectified by the British in an exchange of notes between Grey and Cambon, whereby the French Government agreed to sanction British concessions existing before the war in the territories now attributed to France.[1] The territory itself was recovered by an agreement between Clemenceau and Lloyd George in December 1918, which modified the Sykes-Picot Agreement to this extent on condition that France should obtain some share of Mosul oil, and that Britain should support France against American objections.[2] This led to the agreement on April 18, 1919, between M. Berenger and Lord Long, which foreshadowed the details of the later San Remo Agreement, to which the United States so seriously objected.[3] The oil and territorial questions between England and France were not settled until late in 1920 owing to differences over the location of the pipe-lines which were to bring the oil from Mosul to a port on the Mediterranean.[4] By the San Remo Agreement, France was to receive the German 25 per cent. share in the Turkish Petroleum Company noted above.

The official controversy between Washington and London over the San Remo Agreement and the terms of the draft mandate for Iraq have already been considered. The American protests against the closed door in Iraq, though not formally abandoned, seemed to subside in the autumn of 1921, after Sir John Cadman, then technical adviser to the Anglo-Persian Company, was sent to the United States. These negotiations are not all published, but by the middle of 1922 an oil peace pact was concluded between the Standard Oil Company on the one hand, and the British Government and Royal Dutch–

[1] Cf. Cmd. 768 (1917). [2] Cf. Tardieu, *La Paix*, pp. 226–228.
[3] *Parliamentary Papers*, Cmd. 675 (1921).
[4] The disagreement over the location of these pipe-lines still continues.

Shell interests on the other, by which the Standard Oil interests were promised 25 per cent. participation in the Turkish Petroleum Company monopoly concession.[1] In addition, the Standard Oil Company obtained the right to prospect in Palestine—a right previously denied by the British Government—thus gaining its "first commercial victory in consequence of the political intervention of the United States Government".[2] Further, the agreement extended to the Baku fields and provided for the joint exploitation of Northern Persia by a British controlled company, a large minority of whose stock was held by the Standard interests. In the Mosul fields, according to this arrangement, British oil interests were to have 49 per cent. of the shares, the American companies headed by Standard 25 per cent., and the remainder to be equally divided between Royal Dutch–Shell and the French companies. This would have reduced the French holdings from 25 per cent. to 12½ per cent., a reduction wholly unacceptable to them.

Meanwhile Mosul was again slipping away from British control. This was occasioned by a treaty which France signed with Turkey in October 1921, giving the Turks the coveted Mosul fields now claimed by the British. France is said to have acted in retaliation against alleged British encouragement to a Turkish invasion of Syria and to the Arab revolt.[3] Thus the San Remo Agreement, disputed by the United States Government, was now weakened by France. The French and British rôles in the Turco-Greek War which followed need only be recalled. The British supported the losing Greeks against the Turks, who, under covert French support, disputed the British claim on Mosul.[4]

Recovery of Mosul was one big objective of British policy in the approaching Lausanne Conference, which opened in

[1] Cf. *Manchester Guardian Commercial*, July 6, 1922, p. 255.
[2] *Ibid.*, p. 255.
[3] E. M. Earle, *Turkey, the Great Powers, and the Bagdad Railway*, p. 320.
[4] *Ibid.*, pp. 322, 323.

November 1922.[1] Sir John Cadman's visit to America, and his promises to American oil interests, a few months before Lausanne, must be seen in this connection. French help, alienated by the Syrian crisis, was secured by giving tacit support to her occupation of the Ruhr. But while these circumstances gave the British Government a strong position against the Turks at the opening of the Lausanne Conference, other conditions arose which enabled the Turks to break up the first Conference with the Mosul question still left in suspense.

In the first place, while Sir John Cadman succeeded in securing the support of Standard Oil, two other American groups who were left outside the international consortium continued to urge the State Department to press its case against the British oil combine in Iraq. One was the group led by Admiral Chester, who remembered how the British and German Governments deprived them of their concession in 1913. The other group pressed the vague claims of the heirs of Abdul Hamid. Both held that the State Department too easily forgot the Open Door principle after the Standard Oil interests were promised a minority share in the Turkish Petroleum Company.

In the second place, the growing failure of France's Ruhr policy led to an estrangement between France and Great Britain, in which the latter was suspected of sabotaging the Ruhr occupation.[2]

Accordingly, when the Turks were brought by the British delegation to the point of signing a draft treaty, which would confirm the old unratified 1914 German claim to the Mosul-Bagdad field and return the concession to the Turkish Petroleum Company, the Turkish delegation, with French encourage-

[1] See *Proceedings of the Lausanne Conference on Near Eastern Affairs*, 1922–23. *Parliamentary Papers*, Cmd. 1814 (1923), especially the discussions on the Report of the Fourth Sub-Commission of Committee Three, pp. 337–419. The statement presented by the United States delegation referring to the validity of the Turkish Petroleum Company's concession is printed as an Annex, p. 405.

[2] Denny, *op. cit.*, p. 154.

ment, defied the British ultimatum and left the Conference.[1] The American observer at the Conference, Mr. Child, also opposed the confirmation of this old unratified agreement, upon which the State Department had based much of its objection.[2] The draft treaty was never heard of again.

When the Second Lausanne Conference was convened in April 1923, the Turkish Government had negotiated with Admiral Chester (April 9, 1923) a 99-year exclusive railway, mineral, and oil concession[3] covering 20 kilometres on either side of a 2,400-mile right-of-way, beginning at Angora and going, by way of Sivas, Kharput, and Diarbekr, on straight through Mosul to the border of Persia. Operating under the name of the Ottoman-American Development Company, it was the most elaborate project for railway construction in Asiatic Turkey ever to have been incorporated in a definitive concession. This company also obtained rights under the concession to construct ports and public works, in addition to mines and oilwells, at an estimated cost of 1,500,000,000 dollars.[4]

Here, then, was a powerful American concessionary group contending for Mosul, or at least a part of it,[5] whose interests lay in Turkish success in the territorial settlement. The other powerful American group—Standard Oil and associates—

[1] The French were chiefly interested in the confirmation of old pre-war concessions in Anatolia. The British were more especially concerned with Mosul. This divergence allowed the Turks to magnify the differences between the Allies and to break up the Conference. Cf. *Parliamentary Papers*, 1923, Cmd. 1814.

[2] Cf. Cmd. 1814 (1923), p. 405.

[3] This was, in effect, a ratification of the old 1909 Chester concession, but it was more extensive. For text of this concession see *Current History*, June 1923.

[4] This concession was approved by the Turkish Grand National Assembly on April 9, 1923, by a vote of 185 to 21. See *Levant Trade Review*, vol. xvii, p. 306.

[5] The conflict in Mosul between the Chester concessions and the Turkish Petroleum Company does not cover a large area. However, the location of the best resources being yet undetermined, the conflict was not easily adjusted. The British Government has never recognized the validity of those portions of the Chester concessions which apply to Mosul. See *Parliamentary Debates*, vol. clxiii, cols. 1345–1346.

looked to British success. The British forces were at the time in actual possession of Mosul, which greatly strengthened their position. As for the Chester concessionaires, they apparently failed to secure effective support from the American State Department, losing at the same time the necessary financial support of Wall Street.[1] And to offset the Chester interests, it was announced, on May 15, 1923, that a syndicate of British banks had purchased a controlling interest in the Bank für orientalische Eisenbahnen, of Zurich, which was the Deutsche Bank's holding company for the Anatolian and Bagdad Railway Companies. It only remained to determine whether this Bank is a neutral Swiss or an enemy German corporation, and thus exempt from seizure under the reparations provisions of the Treaty of Versailles.[2]

When the Treaty of Lausanne was signed in July 1923, no agreement about oil had been reached, and the Mosul question was to be referred to the Council of the League of Nations if it could not be settled by direct negotiations within nine months.

While this question was awaiting settlement by the League Council, the practical arrangements for a reconstructed Turkish Petroleum Company were again carried forward. At length, early in 1925, a 25 per cent. participation in the company was granted to the American group, to be owned in equal parts by the following six companies: the Mexican Petroleum Company, the Gulf Refining Company, the Sinclair Consolidated Oil, and the Standard Oil Companies of New York and New Jersey. The Sinclair Company, however, declined to participate.

The American interests were to be given one-half of the original Anglo-Persian holdings, thus dividing the Turkish Petroleum Company into four equal shares, as follows: Anglo-

[1] Standard Oil was charged with checking the credit supply to the Chester concessionaires. See Denny, *op. cit.*, p. 155. However, internal dissension among the concessionaires at this time was more likely the cause of their failure. An unpublished manuscript of Dr. Leland J. Gordon, of the University of Pennsylvania, supports the latter view.

[2] Cf. Moon, *Imperialism and World Politics*, p. 263.

Persian, 25 per cent.; American Companies, 25 per cent.; Royal Dutch–Shell (two-fifths British), 25 per cent.; and French interests (67 companies), 25 per cent.[1] The President of the Company was always to be a British subject.

On March 14, 1925, the Government of Iraq, under British mandate, granted to the newly reformed Turkish Petroleum Company the Mosul Oil Concession, without any reference to the incomplete 1914 negotiations. Its validity, therefore, rests upon the competence of the Iraq authorities and "deprives the British Government of any official interest in the oil dispute as such".[2] The concession is for 75 years and covers the vilayets of Mosul and Bagdad. The monopolistic features of the original concession were somewhat modified, as we shall see later, to be in harmony, as far as possible, with the Open Door principle.

Finally, the League Council, on December 16, 1925, made its anticipated award of the Mosul boundary in favour of Great Britain.[3] The vilayet of Mosul was included in Iraq territory under a 25-year British mandate. Turkey signed the frontier treaty in June 1926 and was given £500,000 in lieu of certain oil royalties.

Further changes in the respective holdings of the four companies comprising the Turkish Petroleum Company have since been made. According to a United States Department of Commerce report, "recent negotiations have altered the percentages to be issued on the contemplated Iraq petroleum production to give 10 per cent. to the Anglo-Persian, 5 per cent. to Mr. Gulbenkian, an original concessionaire, and the remainder equally divided among the French, American, Shell, and Anglo-Persian interests, which will therefore receive 21·25

[1] *Current History*, January 1926, p. 496.

[2] Statement of John Carter, in *Current History*, January 1926, p. 497. "In the same month", says Mr. Carter, "the Ottoman-American Development Company refused an offer of £25,000,000 from a British group for the entire Chester concession."

[3] *Official Journal.* The Anglo-Iraq Treaty entered into force in January 1926.

per cent. apiece".[1] Under this arrangement Great Britain retains the controlling interest through Royal Dutch–Shell and Anglo-Persian, together holding 52·50 per cent. of the shares.

A holding company, known as the Near East Development Company, was formed to take over the quarter interest going to the American combine. The transfer was finally made on August 3, 1928.[2]

The new concession given to the Turkish Petroleum Company by the Government of Iraq represents a kind of compromise between a monopoly grant and the principle of the Open Door, a compromise which may be described as a slowly opening door. It is provided that the Turkish Petroleum Company is to begin a geological survey within eight months; to select, within thirty-two months, twenty-four rectangular plots, each of an area of eight square miles; and to begin drilling operations within three years. After four years all the geological and other information affecting the remaining areas to be offered competitively is to be made public for the benefit of any individuals or companies that may wish to enter the territory; the Government to select annually a minimum of twenty-four similar plots to be offered for competitive bids to firms and corporations, including the Turkish Petroleum Company. After seventy-five years all the Company's property shall revert to the Government of Iraq free of charge.[3]

These terms give to the Turkish Petroleum Company four years within which to select the best 192 square miles out of a total of 89,000 granted by the concession. The Standard does not regard this as a striking advantage "unless good fortune attends its exploration work". Geologists have definitely

[1] Cf. *U.S. Department of Commerce, Foreign Trade Notes*, March 24, 1928. However, the *Petroleum Times* (London) for August 11, 1928, p. 238, in noting the final agreement, leaves each of the four participants with an equal share of 23·75 per cent. The Gulbenkian interests, added to Anglo-Persian and Royal Dutch–Shell, would still give Great Britain control.

[2] *New York Times*, August 4, 1928.

[3] From a copy of the convention between the Government of Iraq and the Turkish Petroleum Company signed March 14, 1925.

confirmed three large pools within the Mosul area. Drilling, which began in April 1927, has already produced several huge gushers. In his Anglo-Persian report for November 1927, Sir John Cadman said, "The successful result secured . . . appears to indicate a very promising future for this company". And in the *London Financial Times* for October 28, 1927, it was stated, "We (British) shall have the satisfaction of knowing that three enormous fields, situated within close proximity of each other and capable of supplying the oil requirements of the Empire for many years to come, are being almost entirely developed by British enterprise."

But this experiment of an oil consortium in Mosul is not without its practical difficulties. Between French and British interests differences have arisen over the location of the pipe-line to the Mediterranean, whether it shall go over Syrian territory or through Iraq and Palestine.[1] Strategic considerations cannot be ignored in this pipe-line controversy. Moreover, American oil companies in the combine are not entirely satisfied with the British control of the company. Standard and Anglo-Persian Oil competition is too keen in other quarters to make this single experiment in co-operation altogether happy.[2]

The four-year period within which, according to the Convention,[3] the Turkish Petroleum Company was to have exclusive right to prospect and select its twenty-four plots was to have expired March 14, 1929. In 1926 this period was extended one year because of the delays incident to unsettled conditions in the area. According to a recent United States Department of Commerce Report, the Turkish Petroleum Company "has obtained from the Iraq Government a five-year extension of this time-limit", thus postponing outside competition for Iraq oil-lands, as provided by Article 6 of the Agreement, until 1934.[4] The reactions caused by these delays show the keen

[1] Cf. *Petroleum Times*, July 14, 1928, p. 84.

[2] Cf. the *New York Times*, December 18, 1927, speech by James W. Gerard.

[3] See Article 6 of the Convention.

[4] *U.S. Department of Commerce, Weekly Report*, July 2, 1928, p. 22.

interest which this question arouses in all sections of the oil world.

The Chairman of the Board of the Standard Oil Company has stated his position thus:[1]

"In the proper development of Mosul and Mesopotamia, American interests—not merely one American interest but all important American interests—should co-operate with the interests of other nations to the end that risks involved in the investment of capital shall be widely distributed and thus minimized; and also to the end that the resources of that country shall not, any more than the resources of any other undeveloped section of the earth, be exploited for the exclusive benefit of a single nation or group of interests. . . . That as the normal development of civilization depends partly upon oil, the best interests of every nation and of the oil companies of every nation will be promoted by the general adoption by all nations of the Open Door policy, permitting the efficient investment of capital from any source and on equal terms. . . ."

The Standard's trade journal more recently stated that "for the first time there has been negotiated what promises to be a practical Open Door policy in which four great nations take equal participation in one field".[2]

At the last meeting of the American Petroleum Institute held in Chicago in December 1928, Sir John Cadman, now Chairman of the Board of the Anglo-Persian Oil Company, referred to the occasion of his previous visit to America seven years ago, saying that the misunderstandings then existing have happily all passed away. Mesopotamia has given way to Iraq, he said, "a symbol of union and not division. . . . The United States is in with the others and for good. . . . The Open Door question . . . now sounds strangely out of date, and for the very good reason that so soon as a door is discovered not to have been locked, it immediately seems to lose its power to interest and excite. . . . The Open Door question, though once it may have presented something of a problem, most certainly does so no longer."[3]

[1] Mr. A. C. Bedford, in *Foreign Affairs*, March 1923, p. 104.
[2] Quoted from *The Lamp* for April 1926.
[3] See *Petroleum Times* (London), December 15, 1928, p. 1089.

This conciliatory statement made by one who ranks high in the counsels of the Turkish Petroleum Company may well indicate the majority opinion of the holders in that Company as regards Mosul. But when it is considered that for "every gallon of oil per head used in Great Britain, twenty are used in America",[1] the necessity felt by American oil interests of ensuring an adequate share of the world's oil resources becomes at once apparent. The Mosul arrangement suggests a possible step for dealing with world resources as a whole.

Does this, then, point the way to a solution of the problem of economic discriminations in the field of international trade and commerce and particularly as regards oil? Is this the kind of Open Door which will satisfy the contending private interests, the Foreign Offices, or the Mandates Commission itself?

As to the oil corporations within the consortium—if we may judge from statements like the foregoing—there should be general satisfaction with such an arrangement of equality in participation, although this one is limited to the field of production only. But there are other important companies—like the Chester group, for example—who are outside the consortium and at certain points in conflict with it. Will these be content with the existing arrangement, and especially with the extension of the time-limit before open competition begins?

The State Department will doubtless find it difficult to act with equal satisfaction on behalf of great rival corporations if, indeed, it can be said to act on their separate behalf at all. When confronted with the charge of assisting the Chester interests at Lausanne in 1923, Secretary Hughes took occasion to say that "at no stage of the negotiations was the American position determined by the so-called Chester Concession".[2] In an earlier statement he pointed out that "this Government's interest in matters of this nature is that of securing recognition for the policy of the 'Open Door'—in assuring equality of

[1] Cf. *Manchester Guardian Commercial*, July 6, 1922, p. 252.
[2] Cf. *New York Times*, January 24, 1924.

opportunity and fair play".[1] However, in the *Literary Digest*, it was stated that "Secretary Hughes explained that Americans have been in constant touch with the State Department . . . and the (Chester) concession is in harmony with the Open Door policy advocated by this Government".[2]

When a Government acts on behalf of a general interest, it sometimes appears to be acting also on behalf of a special interest. When special interests of a national and international character come into conflict, the result is almost certain to be disastrous. "To ensure real equality of opportunity", says Dr. Buell, "some means must be found which will give business interests in every country a chance to participate. This can only be done by some form of governmental and inter-governmental co-operation and control."[3]

One form of this inter-governmental control exists in the Mandates System. What issues arise out of the Turkish Petroleum Company concession which concern them as regards the Open Door? Until 1929 (said to be extended to 1934)[4] the Company enjoys an exclusive prospecting monopoly in Mosul. Although the exclusive character is somewhat offset by the consortium, an extension of the time period creates a condition that must undoubtedly be taken note of by the Commission in the future. The Commission will doubtless want to be satisfied that adequate publicity is given to the geological surveys already made, and that the competitive bids, when they begin, be given every facility making for equal treatment. It may well be presumed that this will constitute one of the most difficult tasks with which the Commission will yet have been confronted.[5]

[1] Cf. *Philadelphia Public Ledger*, July 19, 1923.

[2] Cf. *Literary Digest*, April 21, 1923, pp. 7–9, quoting Washington correspondent of the *New York Herald*.

[3] R. L. Buell, *International Relations*, p. 436.

[4] *U.S. Department of Commerce Report* for July 2, 1928, cited.

[5] See Chapter VIII for special discussion on "Concessions".

CHAPTER VII

THE MANDATES SYSTEM IN PRACTICE IN RESPECT OF THE OPEN DOOR: CUSTOMS; LOANS

I

In the foregoing chapters we have followed the thread of the economic equality principle as it evolved from its simplest beginnings as a colonial trade policy. Both the growing complexity of the principle itself and the changing modes of its application have been noted. Beginning as a simple policy of non-discrimination in regard to imports and exports, it has now been extended to include opportunities for investment and the acquisition of concessions. In its applications we have seen it as a unilateral State policy voluntarily adopted, as in the case of Great Britain; a reciprocal treaty engagement, as in the early German colonies, later to become a State policy; a general non-reciprocal treaty obligation, as in the Congo Free State and contiguous territory under the Berlin Act of 1885, with a supervisory body provided for but never constituted; and finally, the voluntary acceptance by certain Powers of an international engagement to apply it in particular assigned territories under international supervision, as in the Mandates System.

We have now to examine how the economic equality doctrine is understood by the international expert Commission charged to supervise it, and how, in practice, it has worked with respect to certain particular cases. The charters under which the system operates, and the abilities and disabilities of the Permanent Mandates Commission, have been briefly considered above.[1] As to the significance of the Mandates System in the development of economic equality, it would be difficult to find a

[1] *Supra*, Chapter V

clearer statement, and certainly impossible to find a more competent statement, than that made by the Chairman of the Permanent Mandates Commission, the Marquis Theodoli, during the twelfth session of that body, when he is recorded as saying that:

"He was convinced that, as a consequence of the attention given to the mandates question, there lay at the basis of the whole system another principle of the highest importance, namely, the principle of economic equality. That principle was not new in colonial history, but it had never been formulated in so broad and so explicit a manner as in the mandates. At the time when the mandates had been introduced, it seemed to him that an endeavour had been made to remedy, by the application of that principle, a division of the overseas territories which was hardly equitable in itself, and to enable a larger number of States to participate in the advantages of the fourteen mandated territories. From the economic point of view, the Mandatory Powers, being on the spot, were, in their dealings with the other Powers, in a more favourable position. That advantage, however, was balanced by another principle, on which the Commission had often insisted. That principle was that the Mandatory Power had been chosen owing to its resources and experience, and should not derive any direct advantage from its mandate. It was a principle which affirmed the disinterestedness of the Mandatory Power.

The principle of economic equality had, therefore, a particularly wide scope, since its application might contribute to the solution of the two greatest problems which lay at the basis of all international disputes, namely, the demographic problem and the distribution of raw materials. So far as the mandates were concerned, its importance lay, in his opinion, not only in the idea which it embodied, but also in its application, which, though it was limited to the fourteen mandated territories, represented an effective step towards the realization of a wider aim. That was a further reason why the Commission should follow the application of the principle with the utmost attention in order that the obstacles which might be placed in the way of its application might be reduced and eliminated.

"If such were not the case, and if the application of that principle were to remain illusory, the task of the Commission would be reduced to extremely modest proportions." [1]

Open Door supervision by an international commission is a practice without precedent. An examination of the Permanent Mandates Commission in regard to questions of Loans,

[1] Minutes, x, p. 168.

Investments, Customs, Concessions, Land Tenure, etc., in the mandate territories show how principles and policies are being developed as new cases constantly come before it for review. At times the Commission occupies itself with questions of principle in regard to which no specific cases may yet have arisen. Again, concrete cases will arise on which discussion proceeds without consideration and agreement on principle. Certain questions, such as Loans, for example, necessitate the elaboration of principle in advance of special cases lest the Commission should find itself confronted with a *fait accompli*. In this way it can be said that there is being developed a special doctrine of colonial administration which has already been referred to as "a specific code of international mandatory law".[1] This development is admittedly based also on the enlightened colonial methods of the Powers.[2]

Although economic equality is only one of twelve or more subjects which the Commission examines in the course of its work,[3] its detailed observations on this subject are very far-reaching indeed, as will be seen when one considers the questions raised by the Commission. Thus, in past sessions, the Commission has asked for satisfactory evidence in regard to the extension of mining laws operative in an adjoining colony; the application of excess revenues to the general budget of an administrative region; the incorporation for customs purposes of the mandated territory with neighbouring districts which are colonies of the Mandatory; the proper apportionment of the customs receipts among the territories in a customs union; the granting of preferential import duties to the goods of the Mandatory; the granting of discriminatory subsidies and rebates; the subjection of goods of certain origin to troublesome inspection difficulties by customs officers.

[1] M. Van Rees, Vice-Chairman of the P.M.C. Cf. Minutes, v, p. 8.

[2] Great deference is shown to the experiences of able colonial administrators of England, France, and of other countries.

[3] The other subjects, such as Labour, Slavery, Arms Traffic, etc., are listed on p. 124.

Land policies have raised questions as to the alienation of lands to the disadvantage of the natives and of the nationals of other States, and the substitution of "public lands" for "State lands" in official documents to avoid technical error.

In regard to concessions and investments, questions are frequently raised relating to the granting of contracts without clear offer to public tender; the consolidation of enterprises assuming the proportions of a general monopoly; the exclusive exploitation of resources; the renewal or termination of concessions originating from pre-war contracts; the mortgaging of railroads and other public works as security for loans; the use of the purchase or "tying-in" clause as a condition for loans and guarantees.

Other general questions have arisen in regard to the fixation of the exchange rates of non-depreciated currencies to bring them below the normal market rate in the mandated territories; differential postal rates on letters and packages; and discrimination of immigrants on the basis of race. Nor has the Commission hesitated to request fuller information on any subject in subsequent reports of the Mandatory.

Certain of the foregoing questions will now be examined from the records in greater detail.

II

Customs and the Open Door

The territories under "B" mandate are all contiguous to colonies or protectorates of the Mandatory. Those under "C" mandate are either contiguous to or near the Mandatory. This fact has occasioned from the beginning the problem of inclusion of the territory into a customs or administrative union.[1] No question of economic equality arises in this par-

[1] The "B" mandates expressly permit the formation of a customs union "provided always that the measures adopted to that end do not infringe the provisions of this mandate". Cf. Articles 9 or 10 (as the case may be) of the "B" mandates.

ticular in the "C" mandates (except with the United States),[1] since these mandates do not stipulate equal treatment. But where, as in the "B" mandates, tariff differentials may exist in the contiguous territories, a customs union may violate the equality clause of the mandate.

In the first report on the French Cameroons[2] considered by the Commission in its first session, attention was directed to the effects of a customs union. The neighbouring French colonies, falling within the conventional basin of the Congo, do not practise a preferential tariff; hence there would be no derogation of commercial equality. That such a union might give a privilege to the inhabitants of the neighbouring colony was recognized by the Commission, but this point was not regarded as sufficiently serious for protest.[3]

Similarly, Ruanda-Urundi has entered a customs union with the Belgian Congo. The latter is, however, also an Open Door colony under the Berlin Act of 1885 and its revisions. In the cases of British Cameroon, and of French and British Togo, which are contiguous to Nigeria, Dahomey, and the Gold Coast, where the Berlin Act does not apply, the Commission requested special information from the Mandatories as to what tariffs in fact do apply to these territories.[4] The replies assured the Commission that no preferential tariffs are in force.[5]

More recently, when Tanganyika was incorporated in a customs union with Kenya and Uganda, Sir Frederick Lugard inquired whether the principle of economic equality was thereby contravened owing to a protective tariff which was in force for Kenya. The accredited representative replied that there is now an identical tariff in force in the three territories, and that the protective tariff on two articles—wheat and timber—are not preferential nor discriminatory.[6] However, one Commissioner

[1] *Supra*, p. 131.
[2] *Journal Officiel de la République Française*, September 16, 1921, p. 448.
[3] Minutes, i, p. 16.
[4] *Ibid.*, ii, p. 59.
[5] Cf. D. F. W. Van Rees, *Les Mandats Internationaux*, vol. ii, p. 139.
[6] Minutes, vi, p. 132 (July 1925).

observed that free trade between Tanganyika and Kenya gives to the inhabitants of Kenya, and therefore to the Mandatory, advantages which the neighbouring colony of the Belgian Congo does not enjoy because of a customs barrier.[1] Except under general conditions of free trade, there is no way of avoiding this difficulty wherever customs unions are established.

The mandate for Palestine (Article 18) permits a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia. Pursuant thereto a special customs regime exists with Syria.

In keeping with the principle of economic equality and of "no special benefits", the Mandates Commission has been at some pains to see that wherever customs unions exist a proper apportionment of the receipts should go to the mandated territory.[2] Several methods are now in vogue. Ruanda-Urundi and the Belgian Congo determine apportionment by the destination of imports and origin of exports. Collections, however, are made on the outer border. South-West Africa receives a fixed per cent. (1·3) of the total customs receipts. Tanganyika shares with Kenya and Uganda according to a general agreement. None of these methods are strictly accurate and the Commission does not seem to be wholly satisfied with the arrangement.

In the matter of differential import duties, which are prohibited in all "A" and "B" mandates, we may note in particular four of the cases which have been dealt with by the Commission as typical of its work in this regard. In May 1921 the French Government had extended to the Cameroons the decree of February 17, 1921, regulating the customs regime in French Equatorial Africa. Article 54 of this decree provides for special preference to be given to goods of French origin.[3]

When the Chairman drew attention to this law as a violation of the mandate, the representative explained that in practice

[1] Minutes, iv, p. 104. [2] *Ibid.*, vi, p. 136, and ix, pp. 99–101.
[3] Cf. *Annual Report on the French Cameroons* for 1922.

those sections of the decree were not applied to the mandated territory, where, in fact, the strictest economic equality was observed.[1] The next report of the Mandatory showed that the wording of the decree itself had been changed.

Troublesome customs formalities and unnecessary inspection difficulties placed in the way of imports of certain origins, amounting to discrimination, also have not escaped the notice of the Commission. On several occasions the Chairman has given sharp warning that this could not be tolerated.[2]

Rebates of the customs duties and wharfage insurance were reported, in the *Togoland Gazette* for May 1926, to have been made to two cotton companies operating in that territory. The Mandatory's representative was able to assure the Commission that both these ventures were experimental undertakings and not to be regarded as ordinary commercial concerns.[3] The conditions under which such "infant industries" should receive subsidies were not fully discussed.

But perhaps the most flagrant case of tariff discrimination was handled by the Mandates Commission during its thirteenth session (June 1928), when the Annual Report of 1927 for Syria and Lebanon was under examination.[4] Quoting from the *Bulletin Economique des Pays sous Mandat Française*, which gives official prices of goods sold in those territories on which *ad valorem* duties are charged, the Chairman cited numerous price quotations which, he said, could only be regarded as giving preferential treatment to goods of French origin. Thus, Swiss cheese was valued at 16 gold piastres per kilogramme while French cheese was quoted at 12 piastres. Rice from Carolina and Japan was valued at from 190 to 265 piastres per unit compared with 170 to 185 for rice coming from Madagascar. The same variations existed between French and foreign flour, between French and Italian vermouths, and between other articles of commerce.

[1] Minutes, iii, p. 27.
[2] *Ibid.*, v, p. 106; viii, p. 106; xi, p. 150.
[3] *Ibid.*, xi, p. 40.
[4] *Ibid.*, xiii, pp. 172, 173.
[5] For the third quarter, 1927, p. 605. This is an official bulletin.

The accredited representative could only reply that, in general, the goods of non-French origin mentioned were valued more highly by the consumer, hence commanded a higher price. And if this were not the case the High Commissioner for the territory would be asked at once to justify the list or change it.

The Chairman referred to the numerous letters and complaints which were addressed to the Commission about these abuses, and ended by saying that "he would not press the question any further, provided that the necessary orders were given and that the gravity of this observation was realized on the spot".

Preferential treatment by the several Mandatories is accorded to goods coming from their mandated territories. This, of course, has never been regarded by the Mandates Commission as inconsistent with the equality terms of the mandates. Preferential export duties have not been charged by the mandated territories. Except in cases of monopoly, such a charge, if made, would not necessarily be discriminatory as between nationals of other States.

III

Loans, Advances, and Investments in Mandated Territories

Loans and investments in the less highly developed territories of the world constitute at once the most modern as well as the most unmanageable form of imperialism. The mandated territories, though covering a comparatively small area of this undeveloped region, are sufficiently diversified in location and resources to furnish nearly every conceivable sort of problem to which this form of imperialism gives rise. The rôle played by the Permanent Mandates Commission, in this experiment of caring for the welfare of the native inhabitants on the one hand and securing equality in the rights of States and their nationals on the other, is undoubtedly of the greatest significance.

Not only is there being developed "a specific code of international mandatory law", which is certain to have a tremendous influence on Open Door policy and practice in its narrower sense, but also in its larger aspects—the frequent loss of political and economic independence through investors' control of customs and public utilities—the experience of international supervision may help to solve one of the most thorny problems of modern international relations.

The first example to come before the Commission of a loan issued to a mandated territory was in 1923, when the French Government was negotiating a loan for railway development in the Cameroons.[1] The Commission wished to know how the service of the loan would be assured in case the customs dues were insufficient. How would the interests of the French taxpayer be reconciled with the principle of the mandates? Would the French State perhaps mortgage the railways? In case of default, would France assume the guarantee?

On the other hand, the Commission recognized that mandated territories cannot raise necessary loans at good rates without guarantees. In their own colonies, States make advances in the form of non-payable loans or free gifts. Or if repayable loans are made, security is not required from the colony, since the whole colony is itself an adequate security. Certain of the Mandatories treat the mandated territories in the same way, notably Great Britain and Belgium.

But mandated territories, nevertheless, cannot be treated like colonies. The question of revocability and transfer arises, in theory, at least, which tends to check not only the generosity of the Mandatory but operates to discourage the private investor as well.

Here was a new problem raised by the Open Door guarantees in the "A" and "B" mandates. In order to keep these territories absolutely independent and to avoid a condition amounting to veiled annexation, the economic development of these

[1] Cf. Minutes, iii, pp. 33–35.

territories was in danger of being stifled. If the Permanent Mandates Commission and the League were not to be put into the position of accepting an accomplished fact, "it was necessary that certain principles should be settled once for all in order that the Governments might know where they stood.[1]

Since the third session of the Commission, some aspect of loans and investments, in fact or in principle, has been on the agenda of every succeeding meeting. And although very real gains have been made, important questions are still pending action in a future session.

Loans and investments in backward territories have in the past sometimes led to annexation. The Mandates Commission has constantly held that annexation or any step in that direction is irreconcilable with the mandate principle.[2] Indeed, the latter was designed to obviate this eventuality. Not that the Open Door could not exist in annexed territories. In fact, the present "C" mandates are themselves proof of the contrary, having been as colonies under the German regime open to the trade of the world.

However, there is no reason to believe that under French colonial tariff and commercial practice, annexation—except where the Berlin Act or a similar agreement prevented it—would not result in the closed door. Nor is recent British colonial policy altogether reassuring on this point. In any event, annexation would greatly diminish if not completely remove international supervision and thereby break down the most effective machinery yet devised for assuring Open Door conditions, making it a matter of private policy rather than of international guarantee.

This question, obviously, does not arise when free gifts or non-recoverable loans or grants are accorded to the territory. But when the Mandatory becomes a heavy guarantor or lender requiring securities, which in case of bad management and

[1] *Ibid.*, p. 35, remark of M. Rappard in third session of the Commission.
[2] Cf. Minutes, xi, p. 66.

default would result in a form of foreclosure equivalent to annexation, not only would the native population fall into a state of servitude, but economic equality would be as meaningless as it was in the *domaine privé de la Couronne* in the Congo Free State of the late Leopold II. In fact, the Permanent Mandates Commission seems to be extremely sensitive on just this point. On several occasions they have asked the Mandatory to discontinue using the term *domaine privé de l'État française* or to substitute "public lands" for "State lands",[1] a discussion which is rather more germane to the subject of land tenure than of loans.

In the earlier discussions of the Commission, which, for want of more specific cases, tended to be more hypothetical, it was strongly urged that the Mandatory Power which asked securities for guaranteeing a loan was obliged previously to consult the League of Nations. This would avoid the making of excessive loans or excessive interest rates, or both.[2] Also, the League might assure the Mandatory of compensation in case of transfer. This would not only protect the mandated territory, but would also gain the confidence of the private investor.[3]

The Commission now began asking the accredited representatives to furnish information as to the opinion and practice of their various Governments on the "legal consequences arising from loans, floated with or without security, which the Mandatory Power might desire to raise for the benefit of the mandated territory".[4] The Belgian Government was described as not taking any securities on loans, because a trustee was bound by a moral obligation and "could not take security". However, she would expect repayment in case the mandate changed hands before the expected returns from the investment had accrued. Other Governments were likewise asked to explain their position, a process which is not yet wholly complete.

[1] Minutes, ii, pp. 24, 74.
[2] *Ibid.*, iii, p. 77.
[3] *Ibid.*, p. 78.
[4] *Ibid.*, p. 198.

In elaborating the principle which should govern the Mandatory's relation to its ward, the Mandates Commission has repeatedly reiterated the doctrine of economic disinterestedness, which may best be defined in its original terms by quoting from the Allied reply to the German Government's observations on the Treaty of Versailles, where it was stated that "the Mandatory Powers . . . in so far as they may be appointed trustees by the League of Nations, will derive no benefit from such trusteeship". But while the Permanent Mandates Commission have jealously insisted on this doctrine, they have never construed it to mean that the Mandatory is obliged to incur an actual loss or to permit the mandate to become a burden. The indirect benefits which a Mandatory derives from its trust cannot be discussed here.

In its annual report to the Council at the close of its third session, the Mandates Commission sought the advice of the Council on the following questions:[1]

(1) "Whether it is advisable without the express sanction of the Council of the League for a Mandatory Power to hypothecate as security for a loan any works constructed in a mandated territory which, being the property of that territory, would thus become mortgaged to the Mandatory and liable to be transferred to the Mandatory.

(2) "Whether, in order that the Mandatory may be enabled to grant advances or to guarantee a loan, and so obtain more advantageous terms of flotation, it may be possible for the League of Nations to notify that, in the very remote contingency of the transfer of the mandate, the new Mandatory Power would be held responsible for all guarantees for loans and all contracts entered into by the retiring Mandatory, and that the latter should be entitled to such reasonable compensation from the funds of the mandated territory or from the new Mandatory for capital expenditure on specific works, as the League may determine."

In the course of the fourth session the Commission was informed that the British Government was about to float a loan for Palestine which would be guaranteed as to capital and interest by the British Government—that is, the British tax-

[1] Minutes, iii, Annex, p. 312.

payer. It was not doubted that Palestine would receive very favourable terms and that the loan would serve to develop the territory. But certain members of the Commission were solicitous on two points: first, "how could the mandated territory itself be able to afford sufficient security for the raising of a loan in the public market". A loan so raised would at once preserve the principle of economic equality and under normal conditions enable the borrower to obtain it at the most favourable terms. Moreover, a public loan is, in theory at least, international. Second, "could a Government take guarantees in a mandated territory without the intervention of the Council of the League"?[1]

Meanwhile new phases of the problem continued to arise. During the fourth session of the Commission strong emphasis was placed on the hesitation of investors by the Administrator of South-West Africa. The uncertain status of the mandated territories was not only considered by the Council in its sessions of August and December 1924, but the Assembly of the same year, in a resolution, urged the need of "re-establishing and strengthening that confidence without which the mandated territories could not be developed".[2] A situation seemed to be developing which, in effect, tended to close the door to all capital investment in the mandated territories. Obviously this was not the desire or the intention of the Mandatories, the Commission, or the League.

Certain members of the Council, in 1924, wished to know in greater detail the views of the Mandates Commission on this subject. Accordingly, in its fifth session, the question was examined in the light of various memoranda brought to its attention. In the meantime the replies of the Mandatory Powers to the question put by the Council had been received. These replies, however, were all based on only one aspect of the question—"the right of the Mandatory to secure its loans

[1] Minutes, iv, p. 140.

[2] Cf. "Procès-Verbaux of the Sixth Commission", *Official Journal*, 1924, Sup. 29, pp. 13, 21.

by mortgaging public works and the responsibility which would be assumed by a new Mandatory in the very improbable event of a mandate being transferred".[1]

In analysing the problem at this stage, M. Rappard set forth its two aspects. First, there was the alleged hesitation on the part of private investors and of the Mandatory Powers themselves to invest in mandated territories owing to the alleged impermanency of the mandate. Secondly, there was the question of the violation of the mandatory principle by the taking of extensive mortgages and securities, which might eventuate in the mandatories becoming "owners of certain essential parts of the mandated territories estate".[2]

As to the first—hesitation of investors owing to the uncertain status of the mandate—M. Rappard showed convincingly that there was no ground for such hesitation. Mandated territories are, in fact, even more secure than any other territories. They can change their status in three possible ways: revocation of the mandate; voluntary resignation of the mandate by the Mandatory Power to a third Power or to the territory itself; and compulsory cession as a result of political necessity such as war.

As to revocation, it was pointed out that the possibility is so exceedingly remote that it hardly exists as a practical issue. Yet theoretically it must be admitted, if only for the fact that a succession of misdeeds by an inefficient and unscrupulous Mandatory might give occasion for such action. But no such action could possibly be taken without a decision of the Council of the League of Nations, which would at the same time "define the circumstances for taking such action" and would require the new administrator to fulfil all obligations lawfully contracted under the former administrator. Were the Council to make a declaration to this effect it would certainly dispel all misgivings on the subject.

[1] Minutes, vi, p. 156. A report on the subject brought before the Commission by M. Rappard.

[2] *Ibid.*, p. 157.

As to voluntary transfer by sale, grant of independence or by gift, it was the Commissioner's opinion, concurred in by his colleagues, that this could not take place without the consent of the Council. The Council, therefore, determined the conditions of such transfer, and the result would be the same as in the case of revocation.

Compulsory cession brought about by war, in which not only the power of the Mandatory but that of the whole League of Nations would be set aside, is a risk so improbable that no contingency could seem more remote. No colony is as free from such a risk as are the mandated territories, yet investors are readily found who will assume the risk in the colonies. If the Council, therefore, would point out that no change can legally be made in the system of the mandated territories without its consent, the basis of the alleged hesitation by investors of capital would be substantially removed.

The second aspect of the problem—if the Mandatory Power were making a loan to the territory which it administers, for the development of public works, for instance, could it take a mortgage on the yield of such works or on some other part of the territory's assets?—is equally an improbability in actual practice. For, since the Mandatory Power retains the whole administration of the territory, including its entire finances, it is difficult to see why any subsidiary guarantee would seem necessary or useful.[1] The guarantee, in fact, could only be realized if and when the mandatory relationship ceased to exist. In any other situation the Mandatory has full power and right to charge the budget of the territory with the service of the loan. And it will always be within the province of the Permanent Mandates Commission to declare whether the loan itself is made in the interests of the territory in question.

This reasoning led the Permanent Mandates Commission, in its report to the Council at the end of its sixth session, to propose the following draft resolution:[2]

[1] Minutes, vi, pp. 158, 159 *passim.* [2] *Ibid.*, vi, Annex ii, p. 172.

"The Council of the League of Nations:

"In view of the discussion of the Permanent Mandates Commission, in the course of its sixth session, on the subjects of loans, advances, and investments of public and private capital in mandated territories, and in view of the earlier discussions and inquiries, and of the statements of the Mandatory Powers on this subject:

"1. Declares that obligations assumed by a Mandatory Power in a mandated territory, and rights of every kind regularly acquired under its administration, shall have under all circumstances the same validity as if the Mandatory Power were sovereign;

"2. Decides that:

"(*a*) In the event of the cessation of a mandate or of its transfer —however improbable this may be—to a fresh Mandatory Power, the Council, without whose approval no such change can take place, will not give such approval unless it has been assured in advance that the new Government undertaking the administration of the territory will accept responsibility for the fulfilment of the financial obligations regularly assumed by the former Mandatory Power and will engage that all rights regularly acquired under the administration of the latter shall be respected;

"(*b*) Moreover, the Council, when this change has been effected, will continue to use all its influence to ensure the fulfilment of these obligations, as has already been expressly provided in the mandates for Syria and Lebanon and for Palestine."

The Council adopted a resolution very closely resembling the draft submitted.[1]

Meanwhile, new cases of loans made under differing conditions were arising. The Commonwealth Bank of Australia was guaranteeing a considerable overdraft for New Guinea without, however, exercising a lien or mortgage on the territory.[2]

The report of South-West Africa for 1925 showed that the Union Government had advanced, prior to 1920, a sum of £1,810,000, for which repayment might be asked. The Commission requested fuller information.[3]

Out of the Palestine Report for 1925 several questions arose. First, it was stated that Palestine still had to discharge

[1] Cf. *Official Journal*, vi, pp. 435, 495.

[2] See *Annual Report for New Guinea*, 1924–25, p. 34.

[3] Minutes, ix, p. 45.

the Ottoman debt, which stood at from £1,750,000 to £2,750,000.[1] There was also an account which the Palestine Government was to pay to the British Government upon taking over certain properties, railways, and telegraphs built during the war. Further, it was explained by the accredited representative that the Palestine Government was undertaking certain public works for which the Crown Agents for the Colonies in London had already advanced £1,600,000. The Chairman of the Commission expressed the desire for more information in regard to the various loans, advances, and subsidies made to the territory and the nature of the charges on such loans.

A different case presented itself in the Rutenberg concessions of Jordan, Caiffa, and Jaffa, for the supply and distribution of electric power. These concessions had been granted privately, whereas the economic equality provision in the mandates requires that concessions be offered to public tender. The accredited representative said that the Government assumed that it had full right to grant such concessions if it believed them to be in the public interest. Moreover, it was highly unlikely, he said, that any other investors would be interested in such a scheme. He also argued, unsuccessfully, that under the Ottoman law the vilayet had the power to grant such concessions, a power which passed to the Mandatory Administration. When Article 18 of the mandate referring to economic equality was read by one of the Commissioners, the representative agreed that, in general, concessions were to be thrown open to public competition. However, he thought the Rutenberg concession was like an individual who, having discovered a gold-mine, was obliged first to announce it to his Government so that the rest of the world might compete with him to exploit it.[2]

The Permanent Mandates Commission had always insisted

[1] See *Annual Report for Palestine*, 1925, p. 9. Also Minutes, ix, p. 178.
[2] See Article 6 of the "B" mandates (or Article 7, as the case may be).

on the principle that concessions be offered to public tender, except those in the "B" mandates relating to essential public works and services, which are made an exception by the terms of the mandates themselves.[1]

The widely divergent practices among the Mandatories in regard to loans, advances, free gifts, grants-in-aid, investments, and subsidies as noted in the foregoing cases led the Chairman in the course of the tenth session still further to develop the principle which was to guide the Commission. Accordingly he submitted a memorandum on the question which was discussed by his colleagues and referred to a *rapporteur* for further observations at a later session. The Chairman was particularly anxious, (1) that more complete statistical information be submitted in regard to loans, and (2) that outstanding accounts occasioned by the war and military occupation be finally settled in order that the balance-sheets may be free from items other than normal administrative and developmental accounts.[2]

The Purchase Clause

We turn now to another aspect of loans which hitherto has not been considered, namely, the condition attached by the lender that all "purchases made by the mandated territory out of the proceeds of the loans or guarantees must be made in the lending country", a condition known as a "purchase" or "tying-in" clause. This is not a new practice. Such conditions have frequently been attached in recent years to governmental and private loans.[3] This is a well-known practice in the case of American loans to Latin American States.

But in most previous cases the borrowing State has been more free to reject or accept the conditions than is the mandated

[1] Minutes, x, pp. 86, 178 (November 1926).

[2] *Ibid.*, ix, pp. 179, 180. It must be remembered that the Palestine Mandate is irregular on the matter of concessions.

[3] Cf. Robert Dunn, *American Foreign Investments*, for examples of loan contracts with the purchase clause.

territory, which is in the relation of a ward to his guardian. Moreover, economic equality conditions are not obligatory in all other cases.

The first instance to come before the Commission of a loan (guarantee) whose proceeds are earmarked for expenditure only in the Mandatory State was in June 1927, when one of the Commissioners called attention to a debate which took place in the British House of Commons on December 9, 1926, concerning the Palestine and East African Loans (Guarantee) Bill.[1] An amendment had been proposed to the Government Bill to the effect that "all purchases of plant, machinery, or equipment made out of the proceeds of such loans should be made in the British Empire, subject to the reservation that this obligation should not, however, apply to 'purchases of any such plant, machinery, or equipment required for mandated territories'." Supporters of this amendment urged that this exception to the rule should be made "to guard the British Government against the reproach that it was demanding from the mandated territories prices which were higher than market prices".

Mr. Amery, the Secretary of State for the Colonies, opposed the amendment for two reasons—first, "that in his view it was superfluous, because all purchases would be made through the Crown Agents, who had instructions not to place any order outside the British Empire without special reference to the Secretary of State". He then continued as follows:[2]

"As regards the mandated territories, I am not sure that it is desirable to raise that issue or to go so far in laying down a definite proposition of this kind as the amendment seeks to do. After all, when we have given export credit facilities or trade facilities to other countries entirely outside the British Empire, we have regarded ourselves as perfectly entitled to expect some return for that special financial assistance in the form of a stipulation of this kind, and I am not prepared to accept the sweeping suggestion that we are precluded from making any stipulation of this kind in a mandated territory

[1] Cf. *Hansard*, vol. cc, cols. 2374 ff. Discussion on Second Reading of the Bill, December 7, 1926.

[2] *Ibid.*, *loc. cit.*

by way of return for the guarantee. At any rate, I hope my honourable friends will realize that all they are aiming at in this amendment is already covered by the existing procedure, and that the whole purpose of myself and my colleagues will be to see that this policy is effectively enforced."

From this statement it was apparent that the Secretary of State did not agree with the authors of the amendment that the stipulation in regard to purchases made exclusively in the British Empire might be in violation of the terms of the mandates, the relevant clauses of which are as follows:

"The Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation and complete economic, commercial, and industrial equality, *provided that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.*"[1]

The related article (18) of the Palestine Mandate is similar in guarantees and does not make an exception of "essential public works and services".

The Permanent Mandates Commission was reminded by one of its members that a similar question had been raised in regard to other mandated territories. He would ask the accredited representative for Tanganyika (Sir Donald Cameron) if he would be good enough to inform the Commission if the doctrine stated in this case by the member of the Government of the Mandatory Power *was final.*[2]

The Governor of Tanganyika said "he had nothing to add to and would like to take nothing away from the declared policy of the Colonial Secretary".

Although no other answer to the question, as put, was possible, he did add, in reply to another question, that he would have no hesitation in purchasing with the loan money agricultural machinery in another country if it could not be obtained within the Empire.

[1] Article 7 of the Mandate for Tanganyika.
[2] Minutes, xi, pp. 78, 79 *passim.*

When asked if the Administration of the mandated territory would have any objection to receiving loans from another country if they were granted on a more favourable basis, though a stipulation were attached requiring the loan money to be spent in the country making the loan, he replied that he would have the strongest objection to serving two masters.

In discussing the principle at issue it was pointed out in the Commission that when a sovereign State negotiates a loan in another country, accepting conditions as to place of expenditure, it does so of its own free will. A mandated territory, however, being a ward of the Mandatory State, is not in a position to discuss conditions. In the particular case in question, the Commission was assured that the loan was to be used for "essential public works" in Tanganyika and therefore was covered by the exceptions clause in the mandate.

The question of principle still remained, but was reserved for a future discussion of the Commission.

The Commission returned to the questions of fact and principle occasioned by the East African loan in the twelfth session, when the Chairman put the following points before the members.[1] First, is the position taken by Mr. Amery, in stipulating that, in return for the guarantee of a loan, all purchases be made in the territory of the Mandatory Power, consistent with the terms of the mandate? This led to a discussion of the exact meaning and scope of the clause "essential public works and services", in which there was no conclusive agreement as to what public works and services could be called essential or unessential. The latitude of this exception in the "B" mandate remains as yet undefined. The Commission has so far not ventured to discuss whether the exceptions clause is itself in accord with the terms of the Covenant.

The second point dealt with the question of whether the Mandatory is entitled to any "return" for guaranteeing a loan which under normal circumstances will cost it nothing. The

[1] Minutes, xii, p. 64.

rapporteur (M. Orts) considered that, since risk was involved, some compensation was undoubtedly justified.

The third point referred to the possible disadvantage of a tied-in loan or guarantee to the mandated territory itself. Sir Henry Dobbs, representative for Iraq, had at one time argued that Crown Agents could make a better inspection of materials purchased under such an arrangement.[1] The Chairman thought this position was hardly tenable.

A fourth point considered whether the Administration of the mandated territory would have any objection to receiving loans from a country other than the Mandated Power if they were granted on a more favourable basis than by the Mandatory Power, even with the same "tying-in" stipulation.

The question was also raised by a member as to "what the situation of the mandated territory would be if the money market in one of the mandatory countries became so bad as to render any loan difficult or at least much less favourable in its terms than in another financial market". Could the mandated territory be asked to assume the extra burden?

Also, what would be the position if another country offered a loan at better rates and attached no tying stipulation?

Several members of the Commission hesitated to deal with hypothetical cases. The *rapporteur* considered that it was enough to be assured that in any actual case the Mandatory making the loan was not charging excessive prices for money and materials.[2] The question, however, was posed again: why would the lending country impose such a condition if it were not to assure positive benefits which it could not obtain in free competition? To this it was replied that positive benefits to the lending country did not necessarily imply a detriment to the mandated territory.

However, the Commission was not agreed that charging higher prices than obtained on the world market was not

[1] Cf. Minutes, x, p. 75, for statement of Sir Henry Dobbs.
[2] Minutes, xii, pp. 164–169 *passim*.

detrimental to the mandated territory, unfair to the other countries, and inconsistent with the terms of the "A" and "B" mandates.

Moreover, the Commission was divided as to whether or not a further elaboration of the principle should precede the consideration of other cases as they should in future arise. No observations on the point were made to the Council at the end of this session.

The Chairman announced in the thirteenth session that, in the matter of purchase of supplies by or for the use of administration of the mandated territories, "it appears desirable that a step forward should soon be made owing to the intrinsic importance of the question".[1] Particularly since a restrictive loan was at the moment being made to Palestine, where no exceptions clause obtained in the mandate. In the absence of one member particularly interested in the question, no extended consideration was given to the general principle, and the Commission decided merely to insert a brief observation in its report to the Council as follows:

"The Permanent Mandates Commission recommends to the Council that it should request the Mandatory Powers entrusted with the administration of the territories under "A" and "B" mandates to furnish information on the following point: What regulations had been adopted or are generally followed by them when supplies are purchased by the public authorities of the mandated territories." [2]

No replies had yet been received at the time of the Commission's session in November 1928, and it was accordingly urged that the Mandatory Powers forward their observations before, if possible, May 1, 1929. The subject is thus carried over to the next session.

What, then, have been the gains, in regard to the general subject of loans to undeveloped territories, made by the work of the Permanent Mandates Commission?

Firstly, we may note the elaboration of a specific doctrine of

[1] Minutes, xiii, p. 94. [2] Minutes, xiii, Annex 7, p. 224 (June 29, 1928).

"mandatory law" under which such territories may not become the prey of unrestrained exploitation.

Secondly, the way is made more difficult in the future for any outright annexation of such territories both within and without the ambit of the existing mandatory system.

Thirdly, the principle of economic equality has itself been more clearly defined and minutely analysed. The ramifications of investment policies and practices have been more clearly exposed to the public view.

In the fourth place, the absence of sovereignty has been made more clear by the express limitations placed upon the lender's freedom, particularly where the lender has been the Mandatory himself.

Again, the principle of economic disinterestedness has been given more practical interpretations, thus removing it from the status of a mere pious affirmation.

Also the uncertainties hitherto attaching to the impermanent status of the mandated territories have been removed by an explicit decision of the Council.

Finally, the familiar "purchase clause" has been subjected to public scrutiny from the point of view of general rather than special interests.

On the other hand, there remain troublesome and perplexing problems for the future. The scope and meaning of the exceptions clause in the "B" mandates, relating to essential public works and services, will, until defined, vitiate the necessary or desirable degree of international supervision required in those territories. This undoubtedly is a weak point in the present charter.

Also the "purchase clause" will need, and will doubtless receive, more careful examination and control in the future.

And lastly, the Mandatory's right to grant concessions privately, when the sum is below a certain amount, and when the project is in the interest of the territory, opens the way for easy violation of the mandate. Certain phases of this problem are considered in the following chapter.

CHAPTER VIII

THE MANDATE SYSTEM IN PRACTICE IN RESPECT OF THE OPEN DOOR: POSTAL RATES; CONCESSIONS

I

Differential Postal Rates

In its report to the Council at the end of the ninth session of the Commission (June 1926) there was inserted under the special observations on Tanganyika a request for information on the prevailing differential postal rates in the following terms:

"Economic Equality.—The Commission would appreciate an explanation concerning the difference in the rates applicable to letters and certain other postal matter destined for 'British possessions' and 'foreign countries'."[1]

In response to this the British Government, in a note dated July 5, 1927, replied as follows:[2]

"According to the usual British practice, the rates of postage for matter destined for British possessions are assimilated to the inland rates in force in the territory. In the same way, rates on postal matter from the United Kingdom to Tanganyika are assimilated to the inland rates of the United Kingdom. This arrangement is not regarded as conflicting with the provisions of the mandate."

Resuming consideration of this question during its twelfth session, the Chairman of the Mandates Commission pointed out that the British reply was not an answer to the Commission's question. The right of the Mandatory to lower its own postal rates, and thus its own revenues, on mails sent to the mandated territories, was never questioned. It is the reverse case which concerns the Commission—preferences existing in the territories under "A" and "B" mandates on mails destined to their

[1] Document A.12, 1926, vi, p. 5.

[2] Document C.385, 1927, vi. Also quoted in Minutes, xii, p. 67.

respective Mandatories. The question arises whether in international competition this practice does not confer a certain advantage to the commercial relations between the Mandatory Powers and the mandated territories and thus contravene the principle of economic equality.

Differential postal rates exist in most of the mandated territories. When it is considered that the costs of correspondence often constitute a very large item in the general expenses of a trading firm dealing with distant countries, it will be seen that the advantage thus gained is not inconsiderable.

However, the Mandates Commission has been sharply divided on this question. An analysis of their views will serve both to explain the specific issue and to elaborate further the general principle of economic equality as evolved by the Commission.

Certain members held that the question has no relation to the principle of economic equality at all; that this principle was intended to apply to articles of commerce understood as the "exchange of goods", under which postal matter could not be classified; that the equality articles of the mandates should be interpreted restrictively and applied only to the items specifically mentioned therein. Further, it was argued that no *de facto* differentiation exists in respect of the nationality of the consignors; that Frenchmen or other nationals residing in the territory under British mandate enjoy the same postal rates on letters addressed to England, hence no infringement of the principle of equality occurs. Finally, it was averred that if there conceivably is an infringement of equality, it is too small to justify invoking the principle and making an exaggerated application of it; at all events, that the question is not yet ripe for solution.[1]

The majority, however, were not of this opinion. The Chairman of the Commission held that the principle of economic

[1] M. Van Rees particularly supported these views in the Commission, shared in part also by M. Merlin and M. Orts.

equality should be interpreted not restrictively but liberally. Others held that such inequality in postal tariffs is of the same character as inequality in taxation; that postal tariffs represent a payment for service rendered which should be the same for all correspondents regardless of the destination of their letters; and that since postal exchanges include parcels and samples, a system of preferential rates for certain destinations is not lacking in importance.

After a lengthy discussion on these points an attempt was made to reach an agreement on the recommendations to be made to the Council. Accordingly a draft memorandum was submitted which ended by proposing:[1]

". . . that the Council should request the Mandatory Powers entrusted with the administration of the territories under "A" and "B" mandates to furnish particulars concerning:

"(1) their system of postal rates;
"(2) the reasons which have led them to adapt different rates;
"(3) their views as to the compatibility of this practice with the principle of economic equality;
"(4) the financial importance of the question."

This form could not be agreed upon until certain verbal changes were made modifying the possible expressed presumption of incompatibility with the mandate. Point (3) was also deleted in the final form, since it was a question of judgment instead of fact.

The request for information was approved by the Council at its session in March 1928. The interested Governments had not replied at the time of the last session of the Commission (November 1928) and the question is therefore carried over for a future session.[2]

It seems difficult to dispute the fact that a system of differential postal rates adds to the numerous forces which tend to turn business toward the Mandatory State.

[1] This draft was brought in by M. Rappard. Cf. Minutes, xii, pp. 160–198.

[2] The reply of Belgium was received but not discussed in the fourteenth session of the Commission. See Document C.543, 1928, vi, C.P.M. 783. The British reply has also been received.

There is no question that the nationals of the Mandatory State will receive certain indirect benefits from the responsibility assumed in becoming mandatory or trustee. But that direct benefits should accrue, even though slight in extent, seems to violate the principle of economic disinterestedness required of the trustee. However, in certain States of the United States, the trustee, to which the Mandatory State frequently has been compared, is allowed by statute to receive direct remuneration for his services.[1] In view of the fact that most mandated territories have so far been a financial burden on the Mandatories, it may not seem reasonable or politic to be too exacting on minor points. But the Commission rightly feels obliged to consider the principle involved. As Professor Rappard put it in discussing this issue, "Seine tatsächliche wirtschaftliche Bedeutung ist wohl nicht sehr grosz, aber als Prinzipfrage ist sie vielleicht doch nicht ganz belanglos."[2]

If the Commission decides to consider differential postal rates as a derogation of the principle of economic equality, there is little doubt that the facts justify them in doing so. However, in a world of relativity, where economic and political questions cannot be completely isolated, the advice which the Commission will give to the Council on this point may not easily be forecasted.

II

Concessions and Monopolies

By the terms of the "B" mandates and the mandate for Syria and the Lebanon, it is expressly provided that "concessions for the development of the national resources shall be

[1] Cf. Quincy Wright, *The Mandates System and Public Opinion*, p. 36, reprinted from the *South-Western Political and Social Science Quarterly*, vol. ix, No. 4, March 1929.

[2] Address in Berlin, printed in *Zeitschrift für Politik*, xviii Bd., Heft 1, 1928.

granted without distinction of nationality. . . . Concessions in the nature of a general monopoly shall not be granted." However, monopolies of a "purely fiscal character" are permissible. But any such monopoly organized to develop the natural resources of the territory primarily for its fiscal needs must not favour the Mandatory or its nationals or "involve any preferential treatment which would be incompatible with the economic, commercial, and industrial equality guaranteed" by the other provisions of the mandate.

No such special declaration in regard to concessions was included in the Palestine Mandate and in the Anglo-Iraq Treaty. Legally, therefore, no such strict interpretation can be placed on the equality guarantees concerning concessions in these territories. But in practice the Permanent Mandates Commission has made no differentiation in this respect. In fact, it has examined at length matters relating to concessions in both these territories—for example, the Dead Sea salt concession in Palestine, and the extension of the d'Arcy concession by the Anglo-Persian Oil Company in Iraq.

The work of the Mandates Commission in regard to concessions is, perhaps, the least satisfactory of all its activities in connection with Open Door administration. This is not surprising when it is considered that contention over oil rights in Iraq was in itself the cause for the long delay in putting this mandate into force.

As is well known, no subject is more difficult and delicate than the validation and regulation of concessionary rights. And if the concession pertains to oil the problem is still further complicated by the extreme sensitiveness of Governments and special interests to this issue. The Commission may well be exonerated for exhibiting caution and restraint in dealing with the subject. But if there has been caution it cannot be said that there has been hesitation or avoidance whenever the subject called for consideration.

In addition to this general difficulty, however, must be

noticed several special difficulties in regard to concessions arising partly out of the terms of the mandates and partly from practical considerations.

In the first place, fiscal and administrative monopolies are and must be allowed both to enable the mandatory to perform its legitimate functions and to develop the resources of the territory in the interest of the natives. This type of monopoly, though capable of abuse, must, nevertheless, be permitted.

Secondly, certain enterprises, like railroads and quasi-public utilities, by their nature, must be monopolistic. And although the Mandatory is expected in general to see that contracts are offered to public tender, the exceptions clause in the "B" mandates relating to "essential public works and services" can easily be construed to cover such enterprises. Moreover, in the "A" mandates a certain reasonable latitude must be allowed the Mandatory to promote enterprises in which the benefit of the natives outweighs the possible interests of the investing nationals of other States.

Again, the size of the contract or concession is obviously a factor. When the sum involved is less than a certain amount, it has been the custom of certain Mandatories, particularly France, not to solicit public bids.[1] In other Open Door territories also this practice prevails; and in any case, it can only be regarded as reasonable, even though it opens the way for serious abuse.

The Commission frequently raises questions in regard to the letting of contracts. It insists that all important works must be open to competitive bids by being offered to public tender.[2] This principle, properly enforced, will serve both to protect the native population and to guarantee, as far as possible, equality of treatment to the nationals of other States.

[1] See Minutes, xiii (1927), p. 173. Contracts for public works involving sums not exceeding 500,000 francs were said to be granted directly. However, complaints were made by contractors in Aleppo that works in Alexandretta and Antioch involving four million francs were let privately. This matter was called to the attention of the Mandatory.

[2] See Minutes, viii, p. 23; ix, pp. 179, 180, 224; xi, pp. 80, 116, 122; xiii, p. 173.

But it is obviously impossible to give such adequate publicity to contemplated projects as will satisfy all concerned. To announce the project in the official bulletin of the territory sufficiently in advance to enable consular agents to notify their home interests is all that can be expected. Even then the Mandatory cannot always be expected to accept the lowest bid, for the lowest offer may not be the most economical. These factors, taken together, inevitably open a wide latitude of discretionary action by the Mandatory which may lead to abuses, and most certainly do lead to complaints by disappointed bidders.

But still more serious difficulties are encountered by the Mandates Commission in the fact that certain contracts and concessions come down from the pre-war period. The Anglo-Persian Oil concessions in Iraq, for example, date in part to 1901.[1] Some of the territories to which the concession applies were transferred from Persia to Turkey, and then to Iraq. The mandate for Iraq having come into force only in 1924, the Mandate Commission is bound to accept some of the previous conditions attached to the concession. This undoubtedly limits the degree of control which both the Mandatory and the Commission may exercise.

The Turkish Petroleum Company, operating in Mosul and Bagdad under a convention granted by the Iraq Government in 1924, illustrates another type of concession in which a "practical Open Door" is said to obtain in the form of a consortium.[2] This new experiment in international co-operation presents certain new problems on which the Commission has not yet stated an opinion.

From the foregoing it is clear that in the matter of securing economic equality in concessions, the Mandates Commission has difficulties which in some respects are almost insurmount-

[1] See Minutes, xiv, pp. 247, 248, for a brief description of the Anglo-Persian Concession made by Dr. Kastl in a special report to the Commission.

[2] *Supra*, Chapter VI.

able. A closer survey of certain cases with which it has dealt will indicate the character of its work in this field.

In the extensive forests of the French Cameroons, forestry exploitation is encouraged by conceding very large tracts to private enterprise. Fearing that these concessions approached the nature of a general monopoly, Sir Frederick Lugard, in the course of the fourth session of the Commission, wished to be assured on the point. It was explained that a concession of 200 square kilometres is relatively not large and is, moreover, the only way to exploit these resources. The Commission was also assured that no distinction of nationality was made in awarding these contracts.[1] When the huge land and forestry concessions of the Congo Free State, and of French Equatorial Africa until recent times, are recalled,[2] the solicitude of the Commission on this point will be readily understood.

In the Palestine Mandate concessions have tended toward monopolies privately undertaken, partly because of the small area involved and also because of the special interests of Jewish investors to develop that territory. The objections raised have been mostly from Arabs, who are known to have other than solely economic reasons for their opposition. The Rutenberg Concessions for the development of electric power are necessarily monopolistic. That they were let privately was disapproved by certain members of the Commission. The explanation given by the accredited representative—that "the Government assumed that it had full right to grant such concessions if it believed them to be in the public interest"[3]—did not seem wholly to satisfy the Commission.

An exclusive concession for the development of the salt resources of the Dead Sea was similarly questioned. Accordingly, upon its expiration in 1926, the concession was made competitive and a notice for bids was published in the newspapers. Five

[1] Minutes, iv, p. 20. [2] See R. L. Buell, *The Native Problem in Africa.*
[3] Cf. Minutes, ix, pp. 179, 180. Also remarks of Sir Herbert Samuel, Minutes, v, p. 85, giving reasons why the Government granted the monopoly.

applications were made by certain American and English groups, but "none of these applications had proved satisfactory".[1] Four of these were later re-submitted, and in November 1927 it was stated in the House of Commons that the concession was granted, in principle, to Major Tulloch and Mr. Novomeysky, the exact conditions to be determined later.[2]

The Chairman of the Mandates Commission at its meeting on June 15, 1928, asked the accredited representative for Palestine to "inform the Commission why the concession had been accorded in principle . . . before the Mandatory Power had assured itself of the financial guarantees and had decided the terms and conditions to be accepted by the concessionaires. Who were the other applicants, and what was their nationality?"[3] He also recalled that, according to the *New York Times*[4], Major Tulloch had been a former member of the Government staff under Lord Allenby and had, in fact, as an engineer, investigated the riches of the Dead Sea at that time. "Had this report been published?" Did Major Tulloch not have "an unfair advantage over his competitors"? Finally, the Chairman wished to know how this whole procedure was brought "into line with the principle of Article 18 of the Mandate".

The representative could only reply that the most acceptable offer came from Major Tulloch. And although exact terms, conditions, and financial guarantees were not yet agreed upon with Major Tulloch, the tender was no longer open to other parties.

The importance of this concession is revealed by reference to a later discussion of this question in the House of Commons on March 18, 1929, when the Under-Secretary of State for the

[1] Statement of the accredited representative. Minutes, xi, p. 116.

[2] *Parliamentary Debates*, vol. ccxi, p. 497. The Government was pressed by members of the House "to ensure that control remains in British hands", and "to take an interest similar to their interest in Anglo-Persian Oil".

[3] Minutes, xiii, p. 53. [4] *New York Times*, November 20, 1927.

Colonies, Mr. Ormsby-Gore, was asked "whether, in view of the need of cheap potash for British agriculture and the necessity of this country to be free of the German potash monopoly, the question of the Dead Sea concession will be settled before the end of May". Another member wished to know whether the agreements "now being considered by the Palestinian Government in regard to the Dead Sea concessions contain provisions to ensure permanent British control and the avoidance of a monopoly control by any group or organization interested in the production or sale of potash".

To these questions Mr. Ormsby-Gore replied that "in view of the terms of the mandate" it would not be practicable "to enact such provisions as are indicated. . . ." Members of the House were further assured that any concession that is granted "shall not without the previous written consent of the Palestine and Transjordan Governments" permit any arrangement to restrict output or to keep up prices. This discussion led a Liberal member to add: "Would the right hon. gentleman do something to educate his own party in the elementary principles of trusteeship?"[1]

This case admirably illustrates the interplay between parliaments and the Mandates Commission, revealing the clash of viewpoints sometimes existing between these organs in regard to particular questions and their conception of obligations toward them. In this instance the British Under-Secretary of State for the Colonies, who was formerly a member of the Mandates Commission, voiced the view of a trustee, whereas members of his party by their questions plainly revealed, if not contempt for the mandate principle, at least an imperfect understanding of it.

In May 1929 the draft terms of the Dead Sea salts concession were announced by the British Colonial Office.[2] According to this, Major Tulloch and Mr. Novomeysky must agree, before

[1] *Parliamentary Debates*, vol. ccxxvi, No. 73, col. 1477.
[2] See Parliamentary Paper, Cmd. 3326 (May 1929).

the concession is finally granted, to form a company in Great Britain or Palestine within twelve months with a paid-up capital of at least £100,000; the schedule for public or private subscriptions to the capital of the company is first to be submitted to the Crown Agents, who may refuse to grant the concession if their objections, if any, are not respected. Not less than half the capital stock in excess of £250,000 shall be offered for public subscription, the citizens of Palestine and the inhabitants of Transjordan having a prior right to one-fifth of this stock. During these twelve months the Government will grant no other concession for the exploitation of Dead Sea salts.

The concession, when it comes into force, shall be for a term of 75 years. For the first 25 years the company may enjoy an exclusive monopoly, the Government not to exercise "or permit any other person or firm to exercise . . . rights to recover said mineral salts". After 25 years any offer for a similar concession will first be offered to the "said concessionaires", who must accept the terms within twelve months. "Within a belt of 5 kilometres from the present shore-line of the Dead Sea, and for a period of 10 years from the date of the concession, the Government will not grant a licence for the mining of potash or other salts named in the concession without first offering the licence to the concessionaires." The company agrees after ten years to produce annually a minimum of 50,000 tons of salts 80 per cent. pure. Also the company is absolutely prohibited from deliberately restricting output or keeping up prices. Finally, a fixed share of the profits is to accrue to the Palestine and Transjordan Governments.

If the concessionaires were selected in the first place on an absolutely open and competitive basis, the monopoly features of this draft concession might not be regarded as inconsistent with the equality principle of the mandate. But if the concession is to be regarded as an attempt to break the so-called German potash monopoly and to place it in British control, the interests of the nationals of other States will necessarily

look to the Mandates Commission to examine the situation from the point of view of general interests.

The present stage of the Dead Sea salts concession must raise some suspicion from the standpoint of economic equality. At the same time, however, the strong position taken by the Mandates Commission in regard to it should reassure those who doubt the Commission's utility in Open Door administration.

Another salt concession of smaller proportions was considered in connection with the Tanganyika Report for 1926.[1] These salt mines, formerly worked by a private company, had been acquired by the Mandatory Government. Half the shares, however, are owned by a commercial company, which manages the concern. The Government, in transferring these shares, had not put them up to auction in the open market, "as this was not a suitable manner of selecting a business partner".[2] However, this company receives no preference in respect of taxation or the recruiting of labour. It is a small concern and produces only a coarse grade of salt.

The most important case bearing on concessions which has come before the Commission was that of the Anglo-Persian Oil Company in Iraq, which secured in 1926 a 35-year extension to the d'Arcy concession of 1901, thus extending it to 1996. The question arose whether this extension granted by the Iraq Government did not, in fact, constitute a new concession for that period, and whether, if this were so, the concession could not legally be granted without putting it up to public tender.[3]

The original d'Arcy concession was granted by the Persian Government in 1901 for a period of sixty years and covered nearly the whole of Persia, then including a part of the present territory of Iraq. The concession later became a part of the

[1] Cf. *Annual Report for Tanganyika*, 1926, p. 53.

[2] Statement of Sir Donald Cameron, Governor of Tanganyika, Minutes, xi, p. 80.

[3] *Ibid.*, xii, p. 38.

property of the Anglo-Persian Oil Company, which had not developed the field lying in the territories transferred by the Treaty of Erzerum to Turkey in 1913.

When these territories, now a part of Iraq, were transferred from Persia to Turkey, the Ottoman Government, by the Protocol of November 1913, recognized that the concession should be retained as valid in this area. Again, when the same territories were transferred to the Government of Iraq, the latter made an agreement with the Anglo-Persian Oil Company in August 1925 recognizing the validity of the concession and defining the terms upon which an early development of the properties should begin.

The Mandates Commission has not questioned these agreements nor the terms of the concession for the period up to 1961. But when the Minister of Communications and Works of the Iraq Government concluded, on May 24, 1926, an agreement with the Anglo-Persian Oil Company to extend the concession to 1996, the Commission felt obliged to consider the relation of this agreement to Article II of the Anglo-Iraq Treaty, assuring economic equality.

Accordingly, in the twelfth session, Dr. Kastl, the new German member, was asked to study the question and submit a report to the Commission.[1] In his report on November 9, 1928, Dr. Kastl pointed out that by Article II the Iraq Government is obliged to consider applications for concessions on equal terms "and may not reject such application on the ground of the nationality of the applicant". But he further expressed the view that the article of the Anglo-Iraq Treaty of 1922 "does not go so far as to prescribe that the Iraq Government can grant no concession or extension of a concession without calling for public tenders, in such a way that the nationals of any State Member of the League can apply or compete.[2] His report concluded with the opinion that the extension did not violate the treaty. But when it was discussed

[1] Cf. Minutes, xii, pp. 38, 156.

[2] *Ibid.*, xiv, p. 247.

in the Commission, M. Palacios wished it to be understood that this conclusion, if just in the present case, "must not be regarded as a general principle to be followed on every occasion".[1]

In its report to the Council the Commission observed that "it is satisfied that the Iraq Government acted within the terms of Article II . . . concerning economic equality, in adopting the course it selected".[2]

If Iraq continues to be under mandatory supervision when the Turkish Petroleum Company's exclusive concession terminates, there will doubtless be more severe tests for it to meet. The extension of the time period before open competition begins may itself need to be dealt with by the Commission, which already has taken the question up for closer examination.[3]

In summing up the Commission's work on concessions, it may be noted that it has been most active in regard to those territories where its strictly legal mandate on this point is said to be weakest. It may also be added that its recommendations in regard to these cases—Dead Sea salts and Anglo-Persian lease extension—have shown a disposition to yield as much as possible under the mandate restrictively interpreted. We have also seen that the most important concession of all—the Turkish Petroleum Company in Mosul—has raised as yet no serious question either as to its original regularity in 1924 or to its time extensions since. The Commission, however, has closely watched all concessionary developments in the territories and particular members have pronounced their views in vigorous terms. On the whole, the Commission has proceeded cautiously and conservatively in the matter of concessions.

[1] Minutes, xiv, p. 214.

[2] See Report to the Council, Annex 16 of Minutes, xiv, p. 270.

[3] See Minutes, xii, p. 200. Also see Chapter VI for a discussion of the Turkish Petroleum Company.

III

Imports and Exports

The degree of participation by the Mandatory or its nationals in the trade of the mandated territories may be significant in estimating the effectiveness of Open Door policy. In some of the territories, however, the trade statistics are included with the neighbouring Open Door colony and cannot be isolated. But the French Cameroons show that from 1925 to 1927, inclusive, France enjoyed only from 33 per cent. to 45 per cent. of their import trade, whereas British imports exceeded the French in 1925. Of the exports, 37 per cent. to 43 per cent. went to France. In 1927, 36 per cent. of the imports of Togo came from France, and 52 per cent. of the exports went to France.[1]

In Iraq, over the same three-year period, 30 per cent. of the imports, in value, came from Great Britain, and 24 per cent. of the exports went to the latter.[2]

In Tanganyika, for 1926, as much as 62 per cent. of the imports are accredited to the Mandatory. The report, however, does not clearly state that none of this trade originated from a neighbouring British colony.[3]

The trade statistics as a whole show no unusual share of the trade as going to the Mandatory. It is almost inevitable that about half the trade of any Open Door territory should go to the administering country.

[1] See *Revue des Questions Coloniales et Maritimes* (Paris), December 1928, p. 157.

[2] Cf. *Report on the Administration of Iraq*, 1927, p. 100.

[3] See *Report for Tanganyika*, 1920–26, p. 40.

CHAPTER IX

CONCLUSION

Economists have always had to test their conclusions in view of both "long-run" and "short-term" conditions. Failure to do so has undoubtedly led to some of the grossest errors. When we compare even the limited extent to which commercial freedom obtains to-day with the exclusion policies of a century ago, there can be no doubt that the direction of commercial policy has been toward liberalism. Nowhere to-day is the door completely closed to world trade, even though temporary measures in the form of "quarantines" sometimes create that condition. Preferential tariffs and assimilation policies furnish troublesome barriers, and often determine the direction of trade, but even these do not succeed in closing the door completely. Canada, in spite of "imperial preferences", buys nearly four times as much goods (in value) from the United States as from Great Britain. And French Indo-China, though "assimilated", buys only two-fifths of her imports from France. On the other hand, such an Open Door colony as Nigeria buys four-fifths of her imports from Great Britain, while French Equatorial Africa imports more than half of its foreign purchases from France. Hence it is unsafe to conclude that preferences are invariably effective, or that an Open Door regime distributes trade according to customary economic laws. Prices are not the sole determinant of the purchases that will be made in a colonial market.

But having pointed out that preferential tariffs are not always effective, we have seen nevertheless that in the period after 1880 the great colonial empires—with a few exceptions—began not only to adopt preferential policies over a wider area, but also to raise the preferential rates which were applied. This closing door was most effectively applied by France in all areas except where treaty obligations prevented it. The Congo Free

State, under Leopold's management, became less and less "free", while Portugal and Spain followed an assimilation policy which more and more bordered on exclusion. The United States, venturing into the colonial field after 1898, soon adopted a preferential system in the Philippines and Porto Rico, while Japan pursued assimilation in her colonies in the Pacific. The Dominions, one by one, turned to tariff preferences, beginning with Canada in 1898, and followed in turn by New Zealand in 1903, South Africa in 1903, Australia in 1907—each periodically adopting extensions to the preferential regime. During the war preferential export duties were adopted in some of the Crown Colonies. And finally, in 1919, traditionally free-trade Britain herself adopted the preferential policy. Only the German and Dutch colonial trade policies remained under an Open Door regime—excepting, of course, certain British colonies—and the German territories had meanwhile fallen into the hands of empires committed to another policy.

This movement away from the Open Door can only be explained in terms of an intensified nationalism, reawakened in the excitement which followed the partition of Africa and the sudden consciousness that the last available portions of the earth were being pre-empted. Growing populations, together with increasing needs for markets and raw materials, served to accentuate the imperialistic outlook. The Great War brought the whole situation to its climactic point and created an exaggerated nationalistic outlook based either on the doctrine of self-determination or of self-assessed needs, which resulted in a Peace Conference badly fitted for a liberal and idealistic reorganization of the world.

From all this came the Mandates System. Perhaps it was born, like the Berlin Act of 1885, from the desire that none of the claimants should derive superior advantages over the others in the dismembered territories. Economic rivalries were so keen that only equality of economic opportunity could

avert conflicts among them. Incidentally, too, the native populations had to be kept from being despoiled. And they stood to gain by this system of internationally supervised control.

Annexation of territory by the victorious Powers was definitely ended—and perhaps for all time—by the creation of the Mandates System. Near approaches to annexation were subsequently attempted, but nine years of mandatory control have seen no weakening of the system. Instead, the actual degree of international supervision of these territories has appreciably increased, due in large measure to the expert and efficient as well as devoted public service rendered almost gratuitously by the Permanent Mandates Commission. The Mandatories, with intermittent exceptions, have co-operated in a generally satisfactory manner, sometimes spurred on, no doubt, by a growing public opinion in favour of the system. The non-Mandatory Powers, particularly in the Assembly, have not failed to watch the operation of the system and to express regularly their interest in its proper administration.

We have seen, particularly, the steadfast interest of the Chairman of the Permanent Mandates Commission constantly insisting that no ground is lost in the application of the terms of the mandates and holding to a liberal rather than restrictive interpretation of these terms.

An examination of particular applications of the mandates in regard to economic equality reveals that a surprising degree of control is effectively exercised by the Commission in such matters as customs, loans and investments, and concessions—a control not easily discernible from a first reading of the last paragraph of Article 22, charging the Commission "to receive and examine the annual reports".

Customs regulations are carefully observed. Any direct or indirect violation very quickly comes to the attention of the Commission, which, if the facts warrant, will interpellate the Mandatory, thus exposing the whole situation to public opinion, than which there is no more potent weapon.

Loans and investments in mandated territories have been followed by the Commission with equal zeal and perspicacity. Its advice to the Council on loan practices which are inconsistent with the terms of the mandate have led to a system of uncodified regulations which are far superior to those practised hitherto and which still prevail outside the ambit of the Mandatory System. The familiar purchase clause has been subjected to study and criticism, and, while no final pronouncement has been made by the Council, there can be no doubt that the Commission will carry the subject on to a reasonably successful issue.

Concessions and concessionary rights and practices have not been avoided by the Commission, but have been approached with reasonable caution. The anterior roots of some of these concessions, particularly in the "A" mandates, creates a special difficulty. But the principle of publicity for all contracts let, which are not excepted by the terms of the mandate, is insisted upon by the Commission. And since certain concessions must be in the nature of a monopoly, offer to public tender is the only equitable device which can be insisted on by the Commission. The concession of the Turkish Petroleum Company operating in Mosul as an international consortium will doubtless furnish some special problems for the Commission in the future.

The Mandates System has not always functioned in a perfect manner during the first nine years. It has inherited certain difficulties which can only disappear as the war mind recedes in the distance. Its beginnings were badly retarded by the failure of the United States to co-operate in its work. It has had to evolve its own procedure and determine the scope of its own work. But as the first instrument of its kind, its relative success can only be understood when seen in contrast to the history of the Congo Free State.

The question of sovereignty in regard to the mandated territories was earlier a problem not only of international

lawyers but also of the Commission. The past nine years have at least shown that wherever sovereignty resides, it does not reside in the Mandatory. Even a customs union involving mandated territory cannot be effected unless the Mandates Commission (and finally the Council) is convinced "that the measures adopted to that end do not infringe the provisions of this mandate". The vagueness of Article 22 on the question of sovereignty, as on other questions, creates some difficulties. But judging from the scope of the work of the Mandates Commission in the first nine years, there is evidence to believe that vagueness was more desirable than precision. It was within the elastic clauses of the constitution that some of its most effective work was done. In any case, Article 22 was the one article of the Covenant which was formulated without legalistic preciseness and which thereby admits the freer evolutionary development of the system which has come to be one of its chief virtues.

The late Secretary of State, Robert Lansing, was never in favour of the mandates idea. He held that this was only a clever device for robbing Germany of her colonies without applying them to an indemnity account. Thus, he said, "under the mandatory system Germany lost her territorial assets, which might have greatly reduced her financial debt to the Allies, while the latter obtained the German colonial possessions without the loss of any of their claims for indemnity. In actual operation the apparent altruism of the mandatory system worked in favour of the selfish and material interests of the Powers which accepted the mandates. And the same may be said of the dismemberment of Turkey. . . .[1]

A well-known American daily,[2] in commenting on the Reparations Conference in Paris in May 1929, expressed a similar view as to the disposition of the former German colonies. Says the editorial:

[1] Robert Lansing, *The Peace Negotiations*, pp. 155 ff.
[2] *New York Herald* (Paris edition), May 10, 1929.

"It is pertinent to ask what burden resultant of the war the Dominions and Colonies of the British Empire are bearing. . . . What evaluation can properly be put upon the immense territorial accessions to British rule which rewarded, in part at least, the great and noble effort in the war? What about Mesopotamia? What about the former German colonies in Africa? And Palestine?

"It would seem to be high time that the 'mandate' pretence, foolishly authorized in the Versailles Treaty, were abandoned."

From both imperialist and anti-imperialist quarters come criticisms like these—perhaps not altogether unfounded—which can only be properly evaluated by an examination of what the Mandates System has already accomplished. An impartial study will reveal that a very large degree of international control is actually effective in making the administration of these territories conform to the principles of trusteeship and equality.

But the final success of the mandates principle will depend on its influence and effect in colonial areas outside the system.[1] Colonial enterprise to-day is mainly in the hands of ten nations. That this distribution is equitable from any point of view can easily be challenged. The Open Door is a partial immediate

[1] The British Labour Party submitted, in April 1928, the following memorandum in regard to the mandatory principle:

"The adoption of the Mandate System under Article 22 of the Covenant of the League of Nations makes it necessary to consider even in the case of British dependencies the possibility of some kind of international control. . . . The implications of the Mandate System and its honest fulfilment must be so important that it would be not only inconsistent but practically impossible for any State to refuse to accept in non-mandated territory the same obligations as are accepted under the mandates.

"The principle of trusteeship under a League of Nations cannot be confined arbitrarily to particular pieces of territory; it must be extended to cover all tropical Africa, and ultimately the right of the community of nations to supervise the due carrying out by the trustee of the obligation of its trust must be frankly recognized.

"Meanwhile, the authority of the Permanent Mandates Commission as a supervisory authority should be strengthened, and they should hear evidence in support of petitions addressed to them by aggrieved groups in the territories in question."

See *Reports and Proceedings of the Third Congress of the Labour and Socialist International*, Brussels, August 1928, vol. ii, p. 17.

remedy for the inequalities which are incident to this unequal distribution of the markets and resources of the undeveloped territories of the world. The Mandates System is undoubtedly the most effective instrument yet devised to make the Open Door effective. The mandates principle is irreconcilable with that of national economic imperialism. It is enlightened public opinion alone that will determine which principle shall ultimately prevail.

BIBLIOGRAPHY

OFFICIAL DOCUMENTS

League of Nations:

Permanent Mandates Commission, Minutes, Sessions I–XIV.
Reports of the Commission to the Council.
Annual Reports of the Mandatories on the Administration of the mandated territories.
Official Journal, 1920.
Assembly document No. 161, and others.
Mandate texts for thirteen mandated territories.
Anglo-Iraq Treaty of 1922.
Statistical information concerning territories under mandate. Collection of Mandates Section of the League.
League of Nations Treaty Series, 1920– .
Monthly Summary of the League of Nations.
Document C.449 (I) *a* M.345 (*a*), 1922, VI.
C.216, M.77, 1926.
C.P.M.386 (I).
A.12, 1926, VI.
C.385, 1927, VI.
C.543, 1928, VI. C.P.M.783.

The United States:

Tariff Commission: Reciprocity and Commercial Treaties, 1919.
Tariff Commission: Colonial Tariff Policies, 1922.
Department of Commerce: Weekly Commerce Reports.
Congress: Senate Document, No. 97, 68th Congress, 1st Session, Oil Concessions in Foreign Countries.

Treaty Series:

No. 664. German Islands north of the Equator.
No. 690. Cameroons (French).
No. 691. Togo (French).
No. 695. Syria and Lebanon.
No. 704. Ruanda-Urundi.
No. 728. Palestine.
No. 743. Cameroons (British).
No. 744. East Africa.
No. 745. Togo (British).

Great Britain:

Colonial Office: Papers relating to the application of Article 22 of the Covenant. January 1925.

Foreign Office: State Papers.
Parliamentary Debates, House of Commons. Volumes 109, 115, 116, 117, 163, 200, 211, 226.
Parliamentary Papers:
Cmd. 1804 (1923), Proceedings of the Lausanne Conference.
Cmd. 675 (1921); 8482 (1917); 1933 (1904); 3450 (1907); 3880 (1908); 4079 (1908); 8566 (1917); 2394 (1905); 1757 (1922); 1226 (1921); 1814 (1923); 768 (1917); 3326 (1929).
Proceedings of the Colonial Conference of 1887.
Statesman's Year Books.

GERMANY:

Verhandlungen des Deutsches Reichstages.
Anlagen des Deutsches Reichstages.
Das Staatsarchiv.
Die Grosse Politik.
Statistische Jahrbücher.

FRANCE:

Journal Officiel de la République française.
Renseignements Généraux sur le Commerce des Colonies françaises.
Annual Reports on the French Mandated Territories.
Bulletin Économique des Pays sous Mandat française (1917).

BELGIUM:

Commission of Inquiry appointed by the Congo Free State Government. Report on the Congo. Putnams, 1906.
Bulletin Officiel de l'État Indépendant du Congo, 1885–90.
Bulletin Commercial, No. 45.

MISCELLANEOUS:

Proceedings of the Genoa Economic Conference, 1922.
Compte Rendu, Union Interparlementaire, 1924.
Procès-Verbaux de la Commission du Maroc, Conférence de la Paix, Paris, 1919.

BOOKS

AMERY, L. S., The Empire in the New Era, 1928.
ANGIER, CHARLES, and MARVAUD, ANGEL, La Politique douanière de la France dans ses rapports avec celle des autres États, 1911.
ARNAUNÉ, AUGUST, Le Commerce extérieur et les Tarifs de Douane, 1911.

BAKER, P. J. N., Disarmament, 1926. London.
BAKER, RAY STANNARD, Woodrow Wilson and the World Settlement, 3 vols, 1922. New York: Doubleday Page.
BAU, M. J., The Open Door Doctrine in Relation to China, 1923. New York: Macmillan.
BEER, G. L., African Questions at the Peace Conference, 1923. New York: Macmillan.
The Old Colonial System, 1912. New York: Macmillan.
BERNHARDT, GASTON DE, Comp. Handbook of Commercial Treaties, etc., relating to Commerce and Navigation between Great and Foreign Powers. 1912. London.
BUCHER, L., Bilder aus der Fremde, 1862. Berlin.
BUELL, R. L., The Native Problem in Africa, 1928.
International Relations, 1925. New York: Holt.
BURNS, C. DELISLE, Short History of the World, 1918–28.
CATTIER, PROF. F., Étude sur la situation de l'État Indépendant du Congo, 1906. Brussels: F. Lanier.
Droit et Administration de l'État Indépendant du Congo, 1898. Brussels: F. Lanier.
CHAPAUX, ALBERT, Le Congo, 1894.
CULBERTSON, W. S., International Economic Policies, 1925. London and New York: Appleton.
DAVENPORT, E. H., and COOKE, S. R., The Oil Trusts and Anglo-American Relations, 1924. New York: Macmillan.
DAWSON, W. H., Richard Cobden and Foreign Policy, 1926. London: Allen & Unwin.
The Evolution of Modern Germany, 1918. London: Allen & Unwin.
DAY, CLIVE, The Dutch in Java, 1904. New York: Macmillan.
DENNY, LUDWELL, We Fight for Oil, 1928. New York: Knopf.
DUBOIS, E. M., and TERRIER, A., Les Colonies françaises, Un Siècle d'expansion Coloniale, 1902. Paris: Challamel.
DUNN, R. W., American Foreign Investments, 1926. New York, Huebsch.
EARLE, E. M., Turkey, the Great Powers, and the Bagdad Railway, 1923. New York: Macmillan.
FIDEL, CAMILLE, La Paix Coloniale française, 1918. Paris.
FRASER, H. F., Foreign Trade and World Politics, 1927. New York: Knopf.
FRIEDEL, E., Die Gründung Preuss.-Deutscher Colonien in dem Indischen Ozean, 1867.
GIBBONS, H. A., The New Map of Africa (1800–1916), 1918. New York: Century.
GIDE, ANDRÉ, Voyage au Congo, 1928. Paris: Gallinard.
GIRAULT, ARTHUR, The Colonial Policy of France, 1916. London: Clarendon Press.

HARRIS, N. D., Intervention and Colonization in Africa, 1914. Boston: Houghton Mifflin Co.
HERTSLET, SIR EDWARD, Map of Africa by Treaty, 1909, 3rd ed. 3 vols. London: Harrison.
Commercial Treaties.
HOBSON, J. A., The New Protectionism, 1916. New York: Putnams.
HOFFMAN, KARL, Olpolitik und angelsächsischer Imperialismus, 1927. Berlin: Ring-Verlag.
HOURWICH, I. A., Immigration and Labor.
JOHNSTON, SIR H. H., The Opening Up of Africa, 1911. New York: Holt.
KEITH, A. B., The Belgian Congo and the Berlin Act, 1919. Oxford: Clarendon Press.
KELLER, A. G., Colonization, 1908. Boston: Ginn.
KELTIE, J. S., The Partition of Africa, 1895. London: Stamford.
KÖBNER, OTTO, Einführung in die Kolonialpolitik. Berlin.
LASKI, HAROLD J., A Grammar of Politics, 1925. Yale Univ. Press.
LEROY-BEAULIEU, PAUL, De la Colonisation chez les peuples modernes, 1908. Paris: Alcan.
LEWIN, EVANS, The German Regime in Africa, 1915. London: Cassell.
LUGARD, SIR F. D., The Rise of our East African Empire, Vol. II.
MALLOY, W. M., U.S. Treaties, 1910. Government Printing Office, Washington.
MASOIN, F., Histoire de l'État Indépendant du Congo, 1912. Picard-Balon.
MILLER, DAVID HUNTER, The Drafting of the Covenant, 1928. 2 vols.
MILLOT, H., Les Mandats Internationaux, 1924. Paris: Larose.
MONYPENNY and BUCKLE, Life of Benjamin Disraeli, Earl of Beaconsfield, 1914–17. New York: Macmillan.
MOON, P. T., Imperialism and World Politics, 1926. New York: Macmillan.
MOREL, E. D., Red Rubber, 1919. Manchester: Labour Press.
POSCHINGER, H., Bismarck als Volkswirt.
RAPPARD, W. E., International Relations as viewed from Geneva, 1925. New Haven: Yale University Press.
REINSCH, PAUL S., World Politics at the End of the 19th Century, 1900. New York: Macmillan.
ROBERTSON, J. M., The New Tariffism, 1918. London: Allen & Unwin.
ROOT, J. W., Colonial Tariffs.
SCHUCKING, W., and WEHBERG, H., Die Satzung des Völkerbundes, 1924. Berlin.
SEIGNOBOS, CHARLES, History of Mediaeval and Modern Civilization.
SMITH, ADAM, The Wealth of Nations, 1913. New York: Dutton. (First pub. 1776.)
SMITH, RENNIE, Disarmament, 1927. London: Allen & Unwin.

SMUTS, JAN C., The League of Nations: a Practical Suggestion, 1918. London: Hodder and Stoughton.
SOLF, W. H., Colonial Policies, 1919. Berlin: Reimar Hobbing.
STANLEY, H. M., The Congo and the Founding of its Free State, 2 vols, 1885.
STARR, FREDERICK, The Truth about the Congo.
STOYANOVSKY, J., La Théorie Générale des Mandats Internationaux, 1925. Paris.
The Mandate for Palestine, 1928. London: Putnams.
Survey of International Affairs, Vols. I–VI, Royal Institute of International Affairs. London.
TARDIEU, ANDRÉ, La Paix, 1921.
TEMPERLEY, H. W. V., History of the Peace Conference of Paris, 1920. 6 vols. London: Froude.
TOWNSEND, M., Origins of Modern German Colonialism, 1921. New York: Longmans.
TREITSCHKE, H., Politics, 1898.
VANDERVELDE, EMILE, La Belgique et le Congo, 1911. Paris: Brunot.
VAN REES, D. F. W., Les Mandats Internationaux, 1927. Paris: Rousseau & Cie.
VERMEERSCH, A. S. J., La Question Congolese, 1906. Brussels.
WARD, SIR A. W., and GOOCH, G. P., The Cambridge History of British Foreign Policy, 3 vols, 1923. London: Macmillan.
WATERS, C. M., The Economic Development of England and the Colonies, 1926.
WAUTERS, A. J., L'État Indépendant du Congo, 1899. Bruxelles.
WOOLF, LEONARD, Empire and Commerce in Africa. London: Allen & Unwin.

ARTICLES

BATSELL, WALTER B., "The United States and the System of Mandates", International Conciliation, No. 213, October, 1925.
BLAKESLEE, GEORGE H., "Mandates of the Pacific", Foreign Affairs, 1922.
BONN, PROFESSOR M., "German Colonial Policy", United Empire Magazine, 1914.
BUELL, R. L., "Oil Interests in the Fight for Mosul", Current History, Vol. XVII, March, 1923, pp. 931–38.
"'Backward' Peoples under the Mandates System", Current History, Vol. XX, June 1924, pp. 386–396.
CARTER, JOHN, "The Bitter Conflict over Turkish Oilfields", Current History, Jan. 1926, pp. 492–497.
CULBERTSON, WM. S., "Raw Materials and Foodstuffs—The Basis of National Power", The Annals of the American Academy, Vol. CXII, March 1924.

DENNIE, A. L. F., "Origins of the Open Door", Current History, Vol. XXVII, Feb. 1927, pp. 651–653.

EARLE, E. M., "The Turkish Petroleum Company", Political Science Quarterly, Vol. XXXIX, 1924.

HARRIS, H. J., "The Mandatory System after Five Years' Working", The Contemporary Review, Feb. 1925.

INTERNATIONAL CONCILIATION PAMPHLETS, Nos. 151, 166, 212, 213.

MCNAIR, ARNOLD D., "Mandates", Cambridge Law Journal, April 1928.

POTTER, PITMAN, "The Origin of the System of Mandates under the League of Nations", American Political Science Review.

RAPPARD, W. E., "The Practical Working of the Mandates System", British Institute of International Affairs, Sept. 1925.

"Zur Soziologie des Mandatssystems", Zeitschrift für Politik, Bd. 18, Heft 1. 1928.

ROLIN, H., "Le système des mandats coloniaux", Revue de Droit international et de législation comparée, 1920, p. 357.

WALLACE, BENJAMIN, "Preferential Tariffs and the Open Door", Annals of the American Academy, Vol. CXII, pp. 211–220.

WRIGHT, QUINCY, "The United States and the Mandates", Michigan Law Review, March 1925.

WRIGHT, QUINCY, "The Mandates System and Public Opinion", reprinted from the South-Western Political and Social Science Quarterly, Vol. IX. March, 1929.

JOURNALS

American Journal of International Law.
Afrique française.
British Board of Trade Journal.
British Yearbook of International Law.
Current History.
Edinburgh Review.
Foreign Affairs (New York).
International Conciliation, Nos. 166, 213.
Levant Trade Review.
Literary Digest.
London Times.
Manchester Guardian.
Manchester Guardian Commercial.
New York Herald.
New York Times.
The Lamp.

APPENDICES

Appendix A. Text of the Mandate for Syria.

Appendix B. Text of the Mandate for Tanganyika. A typical "B" Mandate.

Appendix C. Text of the Mandate for South-West Africa. A typical "C" Mandate.

Appendix D. Text of the Convention between the United States and Great Britain as Mandatory over Tanganyika. United States Treaty Series, No. 744.

Appendix E. Text of the San Remo Oil Agreement of 1920.

Appendix F. Map of Africa showing Mandated territories. Outline sketch of "B" and "C" Mandates.

APPENDIX A

MANDATE FOR SYRIA AND THE LEBANON

THE COUNCIL OF THE LEAGUE OF NATIONS:

Whereas the Principal Allied Powers have agreed that the territory of Syria and the Lebanon which formerly belonged to the Turkish Empire shall, within such boundaries as may be fixed by the said Powers, be entrusted to a Mandatory charged with the duty of rendering administrative advice and assistance to the population, in accordance with the provisions of Article 22 (paragraph 4) of the Covenant of the League of Nations; and

Whereas the Principal Allied Powers have decided that the mandate for the territory referred to above should be conferred on the Government of the French Republic, which has accepted it; and

Whereas the terms of this mandate, which are defined in the articles below, have also been accepted by the Government of the French Republic, and submitted to the Council of the League for approval; and

Whereas the Government of the French Republic has undertaken to exercise this mandate on behalf of the League of Nations, in conformity with the following provisions; and

Whereas by the afore-mentioned Article 22 (paragraph 8) it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

Article 1

The Mandatory shall frame, within a period of three years from the coming into force of this mandate, an organic law for Syria and the Lebanon.

This organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests, and wishes of all the population inhabiting the said territory. The Mandatory shall further enact measures to facilitate the progressive development of Syria and the Lebanon as independent States. Pending the coming into effect of the organic law, the Government of Syria and the Lebanon shall be conducted in accordance with the spirit of this mandate.

The Mandatory shall, as far as circumstances permit, encourage local autonomy.

Article 2

The Mandatory may maintain its troops in the said territory for its defence. It shall further be empowered, until the entry into force of the organic law and the re-establishment of public security, to organize such local militia as may be necessary for the defence of the territory, and to employ this militia for defence and also for the maintenance of order. These local forces may only be recruited from the inhabitants of the said territory.

The said militia shall thereafter be under the local authorities, subject to the authority and the control which the Mandatory shall retain over these forces. It shall not be used for purposes other than those above specified save with the consent of the Mandatory.

Nothing shall preclude Syria and the Lebanon from contributing to the cost of the maintenance of the forces of the Mandatory stationed in the territory.

The Mandatory shall at all times possess the right to make use of the ports, railways, and means of communication of Syria and the Lebanon for the passage of its troops and of all materials, supplies, and fuel.

Article 3

The Mandatory shall be entrusted with the exclusive control of the foreign relations of Syria and the Lebanon and with the right to issue exequaturs to the consuls appointed by foreign Powers. Nationals of Syria and the Lebanon living outside the limits of the territory shall be under the diplomatic and consular protection of the Mandatory.

Article 4

The Mandatory shall be responsible for seeing that no part of the territory of Syria and the Lebanon is ceded or leased or in any way placed under the control of a foreign Power.

Article 5

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Syria and the Lebanon. Foreign consular tribunals shall, however, continue to perform their duties until the coming into force of the new legal organization provided for in Article 6.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application during a specified period, these privileges

and immunities shall at the expiration of the mandate be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

Article 6

The Mandatory shall establish in Syria and the Lebanon a judicial system which shall assure to natives as well as to foreigners a complete guarantee of their rights.

Respect for the personal status of the various peoples and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in complete accordance with religious law and the dispositions of the founders.

Article 7

Pending the conclusion of special extradition agreements, the extradition treaties at present in force between foreign Powers and the Mandatory shall apply within the territory of Syria and the Lebanon.

Article 8

The Mandatory shall ensure to all complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality. No discrimination of any kind shall be made between the inhabitants of Syria and the Lebanon on the ground of differences in race, religion, or language.

The Mandatory shall encourage public instruction, which shall be given through the medium of the native languages in use in the territory of Syria and the Lebanon.

The right of each community to maintain its own schools for the instruction and education of its own members in its own language, while conforming to such educational requirements of a general nature as the administration may impose, shall not be denied or impaired.

Article 9

The Mandatory shall refrain from all interference in the administration of the Councils of management (Conseils de fabrique) or in the management of religious communities and sacred shrines belonging to the various religions, the immunity of which has been expressly guaranteed.

Article 10

The supervision exercised by the Mandatory over the religious missions in Syria and the Lebanon shall be limited to the maintenance of public order and good government; the activities of these religious

missions shall in no way be restricted, nor shall their members be subjected to any restrictive measures on the ground of nationality, provided that their activities are confined to the domain of religion.

The religious missions may also concern themselves with education and relief, subject to the general right of regulation and control by the Mandatory or of the local government, in regard to education, public instruction, and charitable relief.

Article 11

The Mandatory shall see that there is no discrimination in Syria or the Lebanon against the nationals, including societies and associations, of any State Member of the League of Nations as compared with its own nationals, including societies and associations, or with the nationals of any other foreign State in matters concerning taxation or commerce, the exercise of professions or industries, or navigation, or in the treatment of ships or aircraft. Similarly, there shall be no discrimination in Syria or the Lebanon against goods originating in or destined for any of the said States; there shall be freedom of transit, under equitable conditions, across the said territory.

Subject to the above, the Mandatory may impose or cause to be imposed by the local governments such taxes and Customs duties as it may consider necessary. The Mandatory, or the local governments acting under its advice, may also conclude on grounds of contiguity any special Customs arrangements with an adjoining country.

The Mandatory may take or cause to be taken, subject to the provisions of paragraph 1 of this article, such steps as it may think best to ensure the development of the natural resources of the said territory and to safeguard the interests of the local population.

Concessions for the development of these natural resources shall be granted without distinction of nationality between the nationals of all States Members of the League of Nations, but on condition that they do not infringe upon the authority of the local government. Concessions in the nature of a general monopoly shall not be granted. This clause shall in no way limit the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory of Syria and the Lebanon, and with a view to assuring to the territory the fiscal resources which would appear best adapted to the local needs, or, in certain cases, with a view to developing the natural resources either directly by the State or through an organization under its control, provided that this does not involve either directly or indirectly the creation of a monopoly of the natural resources in favour of the Mandatory or its nationals, nor involve any preferential treatment which would be incompatible with the economic, commercial, and industrial equality guaranteed above.

Article 12

The Mandatory shall adhere, on behalf of Syria and the Lebanon, to any general international agreement already existing, or which may be concluded hereafter with the approval of the League of Nations, in respect of the following: the slave trade, the traffic in drugs, the traffic in arms and ammunition, commercial equality, freedom of transit and navigation, aerial navigation, postal, telegraphic, or wireless communications, and measures for the protection of literature, art, or industries.

Article 13

The Mandatory shall secure the adhesion of Syria and the Lebanon, so far as social, religious, and other conditions permit, to such measures of common utility as may be adopted by the League of Nations for preventing and combating disease, including diseases of animals and plants.

Article 14

The Mandatory shall draw up and put into force within twelve months from this date a law of antiquities in conformity with the following provisions. This law shall ensure equality of treatment in the matter of excavations and archæological research to the nationals of all States Members of the League of Nations.

(1)

"Antiquity" means any construction or any product of human activity earlier than the year 1700 A.D.

(2)

The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

(3)

No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

(4)

Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5)

No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorized by the competent Department.

(6)

Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archæological interest.

(7)

Authorization to excavate shall only be granted to persons who show sufficient guarantees or archæological experience. The Mandatory shall not, in granting these authorizations, act in such a way as to exclude scholars of any nation without good grounds.

(8)

The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

Article 15

Upon the coming into force of the organic law referred to in Article 1, an arrangement shall be made between the Mandatory and the local governments for reimbursement by the latter of all expenses incurred by the Mandatory in organizing the administration, developing local resources, and carrying out permanent public works, of which the country retains the benefit. Such arrangement shall be communicated to the Council of the League of Nations.

Article 16

French and Arabic shall be the official languages of Syria and the Lebanon.

Article 17

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of this mandate. Copies of all laws and regulations promulgated during the year shall be attached to the said report.

Article 18

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

Article 19

On the termination of the mandate, the Council of the League of Nations shall use its influence to safeguard for the future the fulfilment by the Government of Syria and the Lebanon of the financial obligations, including pensions and allowances, regularly assumed by the administration of Syria or of the Lebanon during the period of the mandate.

Article 20

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

Done at London on the twenty-fourth day of July, one thousand nine hundred and twenty-two.

APPENDIX B

BRITISH MANDATE FOR EAST AFRICA

THE COUNCIL OF THE LEAGUE OF NATIONS:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German East Africa; and

Whereas, in accordance with the treaty of June 11, 1891, between Her Britannic Majesty and His Majesty the King of Portugal, the River Rovuma is recognized as forming the northern boundary of the Portuguese possession in East Africa from its mouth up to the confluence of the River M'Sinje; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations), of the said treaty, a mandate should be conferred upon His Britannic Majesty to administer part of the former colony of German East Africa, and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions: and

Whereas by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control, or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandates, defines its terms as follows:

Article 1

The territory over which a mandate is conferred upon His Britannic Majesty (hereinafter called the Mandatory) comprises that part of the territory of the former colony of German East Africa situated to the east of the following line:

From the point where the frontier between the Uganda Protectorate and German East Africa cuts the River Mavumba, a straight line in a south-easterly direction to point 1640, about 15 kilometres south-south-west of Mount Gabiro;

Thence a straight line in a southerly direction to the north shore of Lake Mohazi, where it terminates at the confluence of a river situated about $2\frac{1}{2}$ kilometres west of the confluence of the River Msilala;

If the trace of the railway on the west of the River Kagera between Bugufi and Uganda approaches within 16 kilometres of the line defined above, the boundary will be carried to the west, following a minimum distance of 16 kilometres from the trace, without, however, passing to the west of the straight line joining the terminal point on Lake Mohazi and the top of Mount Kivisa, point 2100, situated on the Uganda-German East Africa frontier about 5 kilometres south-west of the point where the River Mavumba cuts this frontier;

Thence a line south-eastwards to meet the southern shore of Lake Mohazi;

Thence the watershed between the Taruka and the Mkarange and continuing southwards to the north-eastern end of Lake Mugesera;

Thence the median line of this lake and continuing southwards across Lake Ssake to meet the Kagera;

Thence the course of the Kagera downstream to meet the western boundary of Bugufi;

Thence this boundary to its junction with the eastern boundary of Urundi;

Thence the eastern and southern boundary of Urundi to Lake Tanganyika.

The line described above is shown on the attached British 1 : 1,000,000 map, G.S.G.S., 2932, sheet Ruanda and Urundi. The boundaries of Bugufi and Urundi are drawn as shown in the Deutscher Kolonialatlas (Dietrich-Reimer), scale 1 : 1,000,000, dated 1906.

Article 2

Boundary Commissioners shall be appointed by His Britannic Majesty and His Majesty the King of the Belgians to trace on the spot the line described in Article 1 above.

In case any dispute should arise in connection with the work of these commissioners, the question shall be referred to the Council of the League of Nations, whose decision shall be final.

The final report by the Boundary Commission shall give the precise description of this boundary as actually demarcated on the ground; the necessary maps shall be annexed thereto and signed by the commissioners. The report, with its annexes, shall be made in triplicate; one copy shall be deposited in the archives of the League of Nations, one shall be kept by the Government of His Majesty the King of the Belgians, and one by the Government of His Britannic Majesty.

Article 3

The Mandatory shall be responsible for the peace, order, and good government of the territory, and shall undertake to promote to the utmost the material and moral well-being and the social progress of

its inhabitants. The Mandatory shall have full powers of legislation and administration.

Article 4

The Mandatory shall not establish any military or naval bases, nor erect any fortifications, nor organize any native military force in the territory except for local police purposes and for the defence of the territory.

Article 5

The Mandatory:

(1) shall provide for the eventual emancipation of all slaves and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) shall suppress all forms of slave-trade;

(3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

Article 6

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.

The Mandatory will promulgate strict regulations against usury.

Article 7

The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, the acquisition of property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own

nationals, freedom of transit and navigation, and complete economic, commercial, and industrial equality; provided that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate, and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial, and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

Article 8

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

Article 9

The Mandatory shall apply to the territory any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave trade, the traffic in arms and ammunition, the liquor traffic, and the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation, railways, postal, telegraphic, and wireless communication, and industrial, literary, and artistic property.

The Mandatory shall co-operate in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

Article 10

The Mandatory shall be authorized to constitute the territory into a customs, fiscal and administrative union or federation with the adjacent territories under his own sovereignty or control; provided always that the measures adopted to that end do not infringe the provisions of this mandate.

Article 11

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

A copy of all laws and regulations made in the course of the year and affecting property, commerce, navigation, or the moral and material well-being of the natives shall be annexed to this report.

Article 12

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

Article 13

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for decision.

The present instrument shall be deposited in original in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

Done at London, the twentieth day of July, one thousand nine hundred and twenty-two.

Certified true copy:

SECRETARY-GENERAL

APPENDIX C

MANDATE FOR SOUTH-WEST AFRICA

THE COUNCIL OF THE LEAGUE OF NATIONS:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German South-West Africa; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations), of the said Treaty, a mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa to administer the territory afore-mentioned and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty, for and on behalf of the Government of the Union of South Africa, has agreed to accept the mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control, or administration to be exercised by the Mandatory not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations:

Confirming the said mandate, defines its terms as follows:

Article 1

The territory over which a mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa (hereinafter called the Mandatory) comprises the territory which formerly constituted the German Protectorate of South-West Africa.

Article 2

The Mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require.

The Mandatory shall promote to the utmost the material and moral well-being, and the social progress of the inhabitants of the territory subject to the present mandate.

Article 3

The Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

Article 4

The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

Article 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

Article 6

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4, and 5.

Article 7

The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotia-

tion, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

Made at Geneva the 17th day of December, 1920.

APPENDIX D

CONVENTION[1] BETWEEN THE UNITED STATES AND GREAT BRITAIN

Rights in East Africa

By the President of the United States of America
A PROCLAMATION

Whereas a Convention between the United States of America and His Britannic Majesty concerning the rights of their respective nationals in that part of the former German colony of East Africa over which a mandate was conferred upon His Britannic Majesty, was concluded and signed by their respective Plenipotentiaries at London on the tenth day of February, one thousand nine hundred and twenty-five, the original of which Convention is word for word as follows:

Whereas His Britannic Majesty has accepted a mandate for the administration of part of the former German colony of East Africa, the terms of which have been defined by the Council of the League of Nations as follows:

[Here follow the articles of the mandate for Tanganyika, in full. See Appendix B for text.]

Whereas the Government of His Britannic Majesty and the Government of the United States of America are desirous of reaching a definite understanding as to the rights of their respective Governments and of their nationals in the said territory:

The President of the United States of America and His Britannic Majesty have decided to conclude a convention to this effect, and have named as their plenipotentiaries:

The President of the United States of America:

His Excellency the Honourable Frank B. Kellogg, Ambassador Extraordinary and Plenipotentiary of the United States at London:

His Majesty the King of the United Kingdom of Great Britain and

[1] Signed at London, February 10, 1915. Ratified by United States, March 23, 1926. Ratified by Great Britain, April 20, 1926. Ratifications exchanged at London, July 8, 1926. Proclaimed July 12, 1926.

The treaties between the United States and the Mandatories for the other "B" mandates are substantially the same, following almost the identical wording.

Ireland and of the British Dominions beyond the Seas, Emperor of India:

The Right Honourable Joseph Austen Chamberlain, M.P., His Majesty's Principal Secretary of State for Foreign Affairs:

who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

Article 1

Subject to the provisions of the present convention, the United States consents to the administration by His Britannic Majesty, pursuant to the aforesaid mandate, of the former German territory described in Article I of the mandate, hereinafter called the mandated territory.

Article 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of articles 3, 4, 5, 6, 7, 8, 9, and 10 of the mandate to Members of the League of Nations their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

Article 3

Vested United States property rights in the mandated territory shall be respected and in no way impaired.

Article 4

A duplicate of the annual report to be made by the Mandatory under Article 2 of the mandate shall be furnished to the United States.

Article 5

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above, unless such modification shall have been assented to by the United States.

Article 6

The Extradition treaties and conventions in force between the United States and the United Kingdom shall apply to the mandated territory.

Article 7

The present convention shall be ratified in accordance with the respective constitutional methods of the High Contracting Parties. The ratifications shall be exchanged at London as soon as possible. It shall take effect on the date of the exchange of ratifications.

In witness whereof, the undersigned have signed the present convention, and have thereunto affixed their seals.

Done in duplicate at London, this 10th day of February, 1925.

FRANK B. KELLOGG
AUSTEN CHAMBERLAIN

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of London on the eighth day of July one thousand nine hundred and twenty-six.

Now, therefore, be it known that I, Calvin Coolidge, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In Testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twelfth day of July in the year of our Lord one thousand nine hundred and twenty-six, and of the Independence of the United States of America the one hundred and fifty-first.

CALVIN COOLIDGE

By the President:

FRANK B. KELLOGG
Secretary of State

APPENDIX E

TEXT OF SAN REMO OIL AGREEMENT

MEMORANDUM OF AGREEMENT between M. Philippe Berthelot, Directeur des Affaires politiques et commerciales au Ministère des Affaires Étrangères, and Professor Sir John Cadman, K.C.M.G., Director-in-Charge of His Majesty's Petroleum Department.[1]

BY order of the two Governments of France and Great Britain, the undersigned representatives have resumed, by mutual consent, the consideration of an agreement regarding petroleum.

2. This agreement is based on the principles of cordial co-operation and reciprocity in those countries where the oil interests of the two nations can be usefully united. This memorandum relates to the following States or countries:

Roumania, Asia Minor, territories of the old Russian Empire, Galicia, French Colonies, and British Crown Colonies.

3. The agreement may be extended to other countries by mutual consent.

4. *Roumania.*—The British and French Governments shall support their respective nationals in any common negotiations to be entered into with the Government of Roumania for—

(*a*) The acquisition of oil concessions, shares, or other interests belonging to former enemy subjects or bodies in Roumania which have been sequestrated, *e.g.*, the Steaua Romana, Concordia, Vega, etc., which constituted in that country the oil groups of the Deutsche Bank, and of the Disconto Gesellschaft, together with any other interests that may be obtainable.

(*b*) Concessions over oil lands belonging to the Roumanian State.

5. All shares belonging to former enemy concessions which can be secured and all other advantages derived from these negotiations shall be divided, 50 per cent. to British interests and 50 per cent. to French interests. It is understood that in the company or companies to be formed to undertake the management and the exploitation of the said shares, concessions, and other advantages, the two countries shall have the same proportion of 50 per cent. in all capital subscribed, as well as in representatives on the board, and voting power.

6. *Territories of the Late Russian Empire.*—In the territories which belonged to the late Russian Empire, the two Governments will give their joint support to their respective nationals in their joint

[1] Reprinted from the British White Paper (Cmd. 675).

efforts to obtain petroleum concessions and facilities to export, and to arrange delivery of petroleum supplies.

7. *Mesopotamia.*—The British Government undertakes to grant to the French Government or its nominee 25 per cent. of the net output of crude oil at current market rates which His Majesty's Government may secure from the Mesopotamian oilfields, in the event of their being developed by Government action; or in the event of a private petroleum company being used to develop the Mesopotamian oilfields, the British Government will place at the disposal of the French Government a share of 25 per cent. in such company. The price to be paid for such participation to be no more than that paid by any of the other participants to the said petroleum company. It is also understood that the said petroleum company shall be under permanent British control.

8. It is agreed that, should the private petroleum company be constituted as aforesaid, the native Government or other native interests shall be allowed, if they so desire, to participate up to a maximum of 20 per cent. of the share capital of the said company. The French shall contribute one-half of the first 10 per cent. of such native participation and the additional participation shall be provided by each participant in proportion to his holdings.

9. The British Government agrees to support arrangements by which the French Government may procure from the Anglo-Persian Company supplies of oil, which may be pipes from Persia to the Mediterranean through any pipe-line which may have been constructed within the French mandated territory and in regard to which France has given special facilities, up to the extent of 25 per cent. of the oil so piped, on such terms and conditions as may be mutually agreed between the French Government and the Anglo-Persian Company.

10. In consideration of the above-mentioned arrangements, the French Government shall agree, if it is desired and as soon as application is made, to the construction of two separate pipe-lines and railways necessary for their construction and maintenance and for the transport of oil from Mesopotamia and Persia through French spheres of influence to a port or ports on the Eastern Mediterranean. The port or ports shall be chosen in agreement between the two Governments.

11. Should such pipe-line and railways cross territory within a French sphere of influence, France undertakes to give every facility for the rights of crossing without any royalty or wayleaves on the oil transported. Nevertheless, compensation shall be payable to the landowners for the surface occupied.

12. In the same way France will give facilities at the terminal port for the acquisition of the land necessary for the erection of depots, railways, refineries, loading wharfs, etc. Oil thus exported shall be

exempt from export and transit dues. The material necessary for the construction of the pipe-lines, railways, refineries, and other equipment shall also be free from import duties and wayleaves.

13. Should the said petroleum company desire to lay a pipe-line and a railway to the Persian Gulf, the British Government will use its good offices to secure similar facilities for the purpose.

14. *North Africa and other Colonies.*—The French Government will give facilities to any Franco-British group or groups of good standing, which furnish the necessary guarantees and comply with French laws, for the acquisition of oil concessions in the French colonies, protectorates and zones of influence, including Algeria, Tunis, and Morocco. It should be noted that the French Parliament has resolved that groups so formed must contain at least 67 per cent. French interests.

15. The French Government will facilitate the granting of any concessions in Algeria which are now under consideration as soon as applicants have complied with all the requirements of the French laws.

16. *British Crown Colonies.*—In so far as existing regulations allow, the British Government will give to French subjects who may wish to prospect and exploit petroliferous lands in the Crown Colonies similar advantages to those which France is granting to British subjects in the French colonies.

17. Nothing in this agreement shall apply to concessions which may be the subject of negotiations initiated by French or British interests.

18. This agreement has to-day been initialled by M. Philippe Berthelot and Professor Sir John Cadman, subject to confirmation by the French and British Prime Ministers respectively.

J. Cadman
P. Berthelot

San Remo, April 24, 1920

Confirmed:

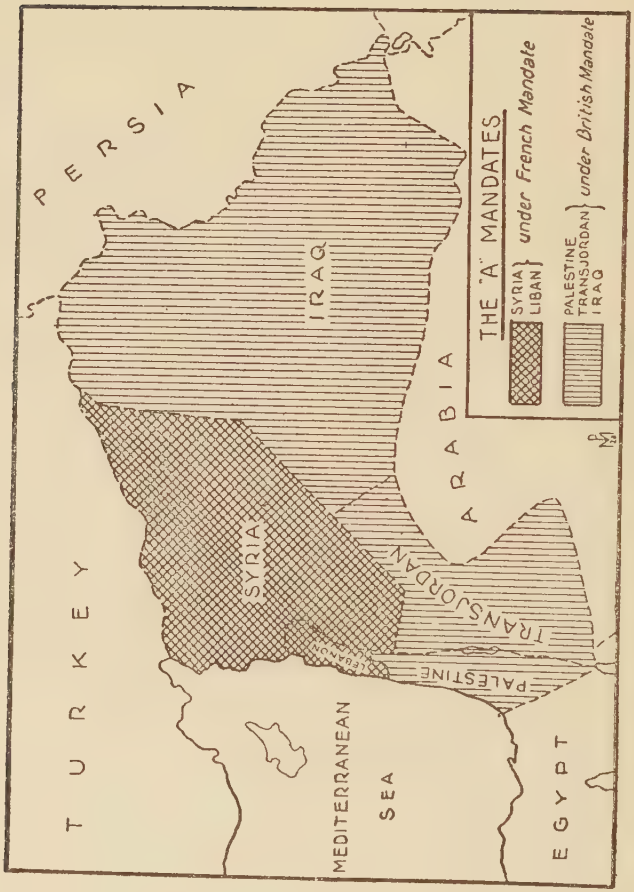
D. Lloyd George
A. Millerand

April 25, 1920

MAP OF AFRICA SHOWING THE MANDATED TERRITORIES

MARIANA OR LADRONE ISLANDS
CAROLINE ISLANDS
MARSHALL ISLANDS
NEW GUINEA
NEW MECKLENB
NEW POMMERN
SOLOMON IS
NAURU
SAMOA ISLANDS
AUSTRALIA
PACIFIC OCEAN
"C" MANDATES IN THE PACIFIC
1 UNDER MANDATE OF JAPAN
2 UNDER MANDATE OF AUSTRALIA
3 UNDER MANDATE OF NEW ZEALAND
4 UNDER MANDATE OF THE BRITISH EMPIRE

OCEANIA



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